

# EXHIBIT 6

To the Declaration of Rakesh N.  
Kilaru

REDACTED VERSION OF  
DOCUMENT REQUESTED  
TO BE FILED UNDER SEAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL  
LITIGATION

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Case No.:  
4:20-cv-03919-CW

Videotaped Deposition of Edwin Desser  
Los Angeles, California  
Thursday, January 12, 2023

REPORTED BY:  
KIMBERLY WILDISH  
CSR NO.: 8078  
JOB NO: 220886

9:06 A.M.

Videotaped Deposition of Edwin Desser, conducted  
by Robinson Bradshaw & Hinson, P.A., held at 333 S.  
Grand Avenue, Los Angeles, California, 90071; before  
Kimberly Wildish, CSR NO. 8078, pursuant to Notice.

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## E X H I B I T S

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Exhibit 3 -	Southeastern Conference Financial Statements August 31, 2020 and 2019 SEC-HOUSE0047887 - SEC-HOUSE0047931
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I N D E X (CONTINUED)

INFORMATION REQUESTED

(NONE)

QUESTIONS INSTRUCTED NOT TO ANSWER

(NONE)

UNANSWERED QUESTIONS

(NONE)

MARKED AT REQUEST OF COUNSEL

(NONE)



1 LOS ANGELES, CALIFORNIA; THURSDAY, JANUARY 12, 2023

2 9:06 A.M.

3  
4  
5 THE VIDEOGRAPHER: Good morning. This is the  
6 start of media labeled No. 1 of the video recorded  
7 deposition of Edwin Desser, being taken in matter of  
8 College Athlete NIL Litigation. Taken in the United  
9 States District Court. For the Northern District of  
10 California. Case Number 4:20-cv-03919-CW.

11 This deposition is being held at 333 S.  
12 Grand Avenue, in Los Angeles, California, on January 12,  
13 2023, at approximately 9:06 A.M.

14 My name is Travis Simmons. I am the  
15 legal video specialist from TSG Reporting, Incorporated,  
16 headquartered in New York, New York. The court reporter  
17 today is Kimberly Wildish, in association with TSG  
18 Reporting.

19 Counsel, please introduce yourselves.

20 MR. FULLER: You want to go first, David, or do  
21 you want me to...

22 MR. GREENSPAN: Sure. My name is David Greenspan  
23 from Winston & Strawn, for the Plaintiffs.

24 MS. PARSIGIAN: Jennifer Parsigian, from Winston  
25 & Strawn, for the Plaintiffs.

1 MR. FULLER: Robert Fuller and Amanda Nitto from  
2 Defendant Southeastern Conference for the Defendants.  
3 I'm from Robinson Bradshaw & Hinson.

4 Go ahead.

5 MS. COPE-KASTEN: Cali Cope-Kasten from Wilkinson  
6 Stekloff on behalf of the NCAA.

7 MR. ZEECK: Phil Zeeck, of Polsinelli, on behalf  
8 of the Big 12 Conference.

9 MR. FULLER: And I think we stipulated that at a  
10 break the people on Zoom will announce themselves to the  
11 court reporter. Is that correct, David?

12 MR. GREENSPAN: Agreed. Yes.

13 THE VIDEOGRAPHER: Thank you.

14 Will the court reporter please administer  
15 the oath.

16  
17 EDWIN DESSER,  
18 HAVING BEEN FIRST DULY SWORN, WAS  
19 EXAMINED AND TESTIFIED AS FOLLOWS:

20  
21 EXAMINATION

22  
23 BY MR. FULLER:

24 Q. Mr. Desser, you've been deposed before  
25 and you've testified before; correct?

1 A. Yes.

2 Q. So you're familiar with the process?

3 A. Yes.

4 Q. If I ask you a question and you don't  
5 understand it, please ask me to repeat it and I'll be  
6 glad to do that.

7 Okay?

8 A. Okay.

9 Q. If you will articulate your answers  
10 verbally for the court reporter, I'm sure she'll  
11 appreciate that.

12 Is there any reason that you're not in a  
13 position to give truthful testimony today? Are you  
14 recovering from Covid? Taking any kind of drugs? I'm  
15 assuming you're in good shape to proceed.

16 Is that correct?

17 A. Ready to proceed.

18 MR. FULLER: We've marked as Exhibit 12, picking  
19 up from Dr. Rascher's deposition, the report that you  
20 prepared in this case, and I'll put that in front of  
21 you.

22 (THE DOCUMENT REFERRED TO WAS  
23 IDENTIFIED AND WAS MARKED AS  
24 EXHIBIT 12 TO THE DEPOSITION)

25 THE WITNESS: Thank you.

1 BY MR. FULLER:

2 Q. That is in fact your report, is it not,  
3 Mr. Desser?

4 A. It appears to be.

5 MR. FULLER: I'll represent to you that we have  
6 not altered it.

7 Q. And does that report contain the summary  
8 of your relevant experience, and of the facts and data  
9 that you're relying on to give your opinions in this  
10 case?

11 A. Yes.

12 Q. And are you... There is nothing that's  
13 not in the report, at least in reference, that you're  
14 planning to testify about; right?

15 A. Well, the report has been submitted for  
16 purposes of class certification purposes. It is  
17 possible that down the line there may be other reports  
18 or changes or additions with respect to merits.

19 MR. FULLER: So I'll rephrase my question.

20 Q. Excluding any future merits report, the  
21 report that is marked as Exhibit 12 summarizes and  
22 contains everything you're prepared to testify about and  
23 that you've been asked to testify about with respect to  
24 class certification; is that correct?

25 A. I believe so. Yes.

1 Q. Let me refer you to Page 63 of the  
2 report. Section 18 where it says "SUMMING UP."

3 Do you have that in front of you, sir?

4 A. Yes, I do.

5 Q. It sums up with two opinions there, which  
6 I won't read for you.

7 Are those the ultimate opinions that you  
8 are providing in this action with respect to class  
9 certification? The bottom line?

10 A. That is the bottom line. The rest of the  
11 report leads one to that point, but those are the key  
12 points of my report.

13 Q. So the rest of the report is support, and  
14 these are the ultimate points here on Section 18?

15 A. I think these are the... are two of the  
16 key points. There are a number of points made  
17 throughout the document, and they all represent part of  
18 the report.

19 MR. FULLER: I understand that.

20 Q. What I'm trying to make sure I understand  
21 is what's the scope of your testimony.

22 You're not planning to testify about any  
23 topics that are not addressed in the report, in one way  
24 or the other; is that correct?

25 MR. GREENSPAN: Object to the form.

1 Go ahead.

2 THE WITNESS: I don't currently have any plans to  
3 testify beyond the realm that is represented by the  
4 report. But I wouldn't limit the testimony to just the  
5 two points that are in the summation section.

6 MR. FULLER: I respect that.

7 Q. With respect to your expertise, does your  
8 report contain a summary of the expertise that you have  
9 that you believe is relevant that you bring to this  
10 matter to base your opinions on?

11 A. Yes, it does.

12 Q. And is there anything left out of the  
13 report in that regard, that you would intend to bring up  
14 in this case?

15 A. I... I believe that the CV that is  
16 contained in the report is reasonably up to date. I  
17 cannot tell you that it includes each and every thing  
18 that I've done throughout my career.

19 So, you know, it is necessarily more  
20 brief but does contain the categories of work and a  
21 variety of clients for which I have performed work. So  
22 I believe it is generally inclusive but it is not  
23 exhaustive.

24 Q. In preparing for this deposition,  
25 there's... What I'm getting at is there is nothing that

1 you realized that you left out, that you wished you had  
2 put in the report in terms of your experience or support  
3 for your opinions; is that correct?

4 A. There isn't anything that has come to  
5 mind since, but I don't want to exclude the possibility  
6 that I may realize there is something missing.

7 Q. But nothing that you know of now;  
8 correct?

9 A. Not that I can think of right now.

10 Q. Your expertise is in media rights; is  
11 that correct, generally speaking?

12 A. Yes.

13 Q. And you're not an economist; correct?

14 A. I am not.

15 Q. So to exclude one area or not exclude it  
16 as the case may be, are you here to testify in any  
17 respect about labor markets?

18 MR. GREENSPAN: Object to the form.

19 THE WITNESS: Can you be more specific?

20 BY MR. FULLER:

21 Q. Well, I assume if you were an economist  
22 to testify about labor markets, you would know that you  
23 were going to testify about them.

24 That's not a subject you've been asked to  
25 testify about; right?

1           A.           I mean, except to the extent that the  
2 case is ultimately about labor markets, and I'm... You  
3 know, as a layperson I understand that. But I'm not  
4 here to give you economic testimony or to act as an  
5 economist, which I am not.

6           Q.           So to be clear, the opinion that you're  
7 giving here, Number 1 on Page 63, is that... to quote  
8 your report:

9                       Approximately 10 percent of  
10           the media broadcast revenue to the  
11           Power 5 conferences (and Notre Dame)  
12           for these sports --

13                      Which refer to football and men's and  
14 women's basketball.

15                      -- is a reasonable and conservative  
16           estimate of the marketplace value of the  
17           NIL of college athletes provided via the  
18           media rights contracts.

19                      Do you see that?

20           A.           Yes.

21           Q.           So you're here to testify about the value  
22 that the broadcast rights holders are providing to the  
23 networks, the media companies, in the form of NIL  
24 component; is that correct?

25           A.           The testimony is about the sub set of



1 rights fees that are fairly allocable to the provision  
2 of NIL to the broadcasters.

3 Q. In the media agreements that are assigned  
4 by the broadcast rights holders and the networks or  
5 broadcaster; correct?

6 A. Yes. Right.

7 Q. On Page 39... If you'll turn to Page 39  
8 of Exhibit 12.

9 A. I am on Page 39.

10 Q. You see the second bullet point from the  
11 top:

12 "I do not attempt to value many  
13 additional non-broadcast uses in the  
14 context of ticket sales, game presentation,  
15 team promotional appearances, and for  
16 institutional marketing and promotion  
17 of the school/conference (players,  
18 student, faculty recruitment)/NCAA,  
19 which are also typically negotiated and  
20 licensed."

21 Do you see that?

22 A. Yes.

23 Q. So I take it from this that your focus  
24 here is purely on the broadcast rights and the NIL  
25 component that you assert as part of those broadcast

1 rights; is that right?

2 A. That is generally correct.

3 Q. So I don't need to ask you about  
4 sponsorships, trademarks, other types of marketing and  
5 promotions here; because you're not... those are not  
6 subjects about which you've testifying?

7 A. Well, there are uses of trademarks and  
8 uses of NIL in the context of promotion that would fall  
9 into the overall category of what I'm focused on in the  
10 report.

11 Q. The opinion that you're giving has to do  
12 with the component that you say is NIL in the broadcast  
13 rights conveyance; right?

14 A. Yes.

15 Q. So you're taking the broadcast rights  
16 payments and attempting to excise the NIL value that is  
17 in those payments, in your opinion; correct?

18 A. I don't know if I would use the term  
19 "excise."

20 Q. What term would you use?

21 A. I am focused on identifying and  
22 approximating the portion of the overall rights  
23 conveyance that is appropriately allocable to the  
24 conveyance of NIL.

25 Q. And when you say "the portion of the

1 overall rights conveyance" you mean the broadcast rights  
2 conveyance; is that correct?

3 A. The media rights conveyance. Yes. These  
4 agreements do provide for more than just broadcast.

5 Q. You have an opinion that we'll go into in  
6 more detail, that the bottom line is... I'll refer to  
7 it as "the 10 percent opinion."

8 That 10 percent of certain rights is  
9 attributable to NIL value. You know what I'm talking  
10 about there? It's the first item on the last page of  
11 your report?

12 A. Yes.

13 Q. Okay. And in terms of 10 percent of what  
14 is 10 percent of broadcast rights is what I'm trying to  
15 get at. That's what I'm trying to understand.

16 A. The broadcast and media rights value that  
17 is contained in the various agreements that the  
18 defendants have with broadcasters.

19 Q. So would that include any trademark  
20 licensing rights that are also conveyed as part of a  
21 broadcast rights agreement?

22 A. "Would that..." And by "that" do you  
23 mean the 10 percent?

24 Q. Do you... When you're multiplying  
25 something by 10 percent, do you include the value of the

1 trademark rights if any are transferred?

2 A. Well, they would be included in the  
3 denominator. Not in the numerator.

4 Q. I was thinking about it as a  
5 multiplication by 10 percent.

6 So if you're multiplying 10 percent by  
7 something, do the trademark rights get included in what  
8 you're multiplying by 10 percent or dividing by .1?

9 Because the denominator would be .1;  
10 right?

11 A. No.

12 Q. Okay. Tell me how to think about this  
13 then.

14 A. So 100 percent... So let's just use some  
15 round numbers.

16 Say that the contract is for  
17 \$100 million. The 10 percent would be 10 percent of  
18 \$100 million, which in this example would be  
19 \$10 million.

20 The trademark, and if we're talking here  
21 about trademark for the universities or for the  
22 conferences, those would be in the remaining 90 percent  
23 to the extent that they have been conveyed by the  
24 agreement.

25 Q. If there is a separate agreement

1 concerning sponsorship rights, you would not include  
2 those in the 90 percent; is that correct?

3 A. Well, often there are certain sponsorship  
4 rights conveyed in the agreements. And it is part of  
5 the consideration that the network is paying for.

6 So certain sponsorship rights could very  
7 well be in the 100 percent but they're not in the  
8 10 percent.

9 Q. But if you have a separate sponsorship  
10 rights agreement, you don't include those; correct?

11 So if AT&T is the official sponsor of the  
12 NCAA, you don't include that in the 90 percent, do you?

13 A. There are agreements that extend beyond  
14 simply the ability of a broadcaster to show the games  
15 and sell advertising in the games and produce the games  
16 and promote the games.

17 And in those agreements, there are...  
18 there may be separate provisions, whether they're part  
19 of a separate agreement or not, which convey sponsorship  
20 rights.

21 Typically, for purposes of my analysis, I  
22 would exclude the sponsorship rights from that from the  
23 denominator. Because if we're just talking about the  
24 broadcast rights themselves, sponsorship rights are  
25 something separate.

1                   Having said that, there is a... There is  
2 usually some modest amount of sponsorship opportunity  
3 that gets transferred in media rights agreements beyond  
4 the right to sell advertising.

5                   And those are typically de minimis but  
6 they would not necessarily be all excluded across the...  
7 across the board. They would... They would fall. Any  
8 kind of remnant amount of sponsorship that's in one of  
9 those agreements would fall into the 90 percent side of  
10 the equation.

11           Q.           Do you remember when Host Communications  
12 used to sign up agreements with schools/conferences to  
13 market sponsorship rights?

14                   You know, you're familiar with that?

15           A.           I'm generally familiar. I'm aware of  
16 Host Communications. I know they do or did syndication  
17 and sponsorship sales work.

18           Q.           What I'm getting at is how do you decide  
19 whether to draw the line? If it's a modest amount of  
20 sponsorship rights that are part of the broadcast  
21 agreement then you would include that in the  
22 denominator, but if it's a separate sponsorship deal  
23 then you don't?

24                   Is that... Is that... Can you give me  
25 what the rule of thumb is or what valuation you're using

1 here?

2 A. It is important to look at the totality  
3 of what is in a broadcast agreement. There are a number  
4 of elements that are typically included, and then there  
5 are some, for example, things like sponsorship rights or  
6 the ability to say that AT&T is the official  
7 telecommunications provider of the NCAA or the  
8 conference.

9 It would be my intention in doing such an  
10 analysis to include a -- to exclude -- excuse me -- any  
11 material amount of sponsorship rights sale from the  
12 corpus of the media rights exchange.

13 But I want to hasten to add that a media  
14 rights agreement is a big bucket of rights that are all  
15 designed to work together to complement one another to  
16 create value.

17 MR. FULLER: I'm going to get to that in a  
18 minute. I don't want to cut you off. But we're going  
19 to go down that road for quite a while.

20 I think you've answered my question. But  
21 if you have more to add, please feel free to do so.

22 THE WITNESS: If you're satisfied, then we can  
23 move on.

24 BY MR. FULLER:

25 Q. Look at Page 7 of Exhibit 12, please. At

1 the bottom of the page, the next-to-the-last line you  
2 say:

3 "To be conservative, I have  
4 determined that the lower end of the  
5 range in my analysis - 10 percent - is  
6 a reasonable estimate of the collective  
7 value of the class members' NILs used  
8 in broadcasts of Power 5 football and  
9 men's and women's basketball games  
10 (including Notre Dame)."

11 I read that correctly, did I not?

12 A. Yes.

13 Q. You reference "the collective value." So  
14 I want to understand what this 10 percent is.

15 Is it... Are you saying that every  
16 student athlete that's in the class that plays  
17 basketball or football is provided... that the value of  
18 the NIL rights that are provided in the broadcast  
19 agreement is 10 percent? Or does it vary from student  
20 athlete to student athlete, so that 10 percent is a  
21 reasonable average?

22 Tell me what you're seeing here.

23 A. I was asked to estimate the entire class'  
24 allocable monetary value from these contracts as a  
25 group. As it says in the document, it is the collective



1 value. I did not do anything with respect to individual  
2 athletes whatsoever.

3 Q. So your 10 percent might or might not be  
4 the value that is attributable to any single athlete;  
5 you just aren't here to testify about that, either way?

6 A. My 10 percent estimate is with respect to  
7 the entirety of the NIL being conveyed for all of the  
8 athletes.

9 Q. And not a single athlete individually;  
10 correct?

11 A. Correct.

12 Q. You're also not here to testify about the  
13 relationship between the school and the athlete, and on  
14 what terms the school would pay the athlete or not pay  
15 the athlete. That's Dr. Rascher's area; correct?

16 A. I can't tell you whether that's  
17 Dr. Rascher's area or not. I haven't read his report.

18 What I'm here to talk about is the  
19 broadcast agreements in their entirety, and an  
20 appropriate amount that those agreements represent with  
21 respect to the NIL conveyance.

22 Q. The value conveyed to the network or the  
23 broadcaster.

24 A. The portion of the overall value, which  
25 is reasonably attributable to the NIL.

1 Q. In that broadcast agreement conveyance;  
2 correct?

3 A. Yes. Not any individual contract either.  
4 It's the sum of all of the contracts collectively.

5 Q. So you're here to testify about the  
6 transaction and the value elements in the transaction  
7 between the broadcast rights holder and the broadcaster.

8 You're not here to testify about the  
9 relationship between the student athlete and the team or  
10 the conference -- is that right -- in terms of any value  
11 that's transferred there from the conference to the  
12 student athlete or vice versa?

13 A. Um, can you rephrase the question,  
14 please?

15 MR. FULLER: Yeah. That wasn't a very good  
16 question. Let me come back to that in a little bit.

17 Q. With respect to the reference on Page 7  
18 and 8 that we just read, it speaks to class members.

19 Do you understand that "class members" is  
20 a term that includes only the scholarship football and  
21 basketball student athletes?

22 A. That's my understanding.

23 Q. Is it your testimony that the --

24 A. Excuse me. No.

25 Come to think of it, I think there is

1 also a class that is for those who have sold NILs since  
2 the rules changed. So I think in that respect it's more  
3 than just the basketball and football players.

4 MR. FULLER: That's an appropriate observation.

5 Q. But with respect to the broadcast  
6 licensing class, it only includes the scholarship  
7 football and basketball student athletes, is your  
8 understanding, or, no?

9 A. That is my understanding. Yes.

10 Q. And you're here to testify about the  
11 broadcast licensing part of this case, as summarized in  
12 your report; correct?

13 A. Generally speaking, yes.

14 Q. Okay. Is it your... Do you have a view  
15 as to whether the non-scholarship athletes... Let me  
16 strike that.

17 In this conveyance of NIL value that's  
18 the subject of your report, where a conference or the  
19 NCAA or a school enters into a broadcast rights  
20 agreement with a network, do you have an opinion as to  
21 whether there is any NIL value transferred there with  
22 respect to non-scholarship basketball and football  
23 players?

24 MR. GREENSPAN: Object to the form.

25 ///

1 BY MR. FULLER:

2 Q. Do you understand my question?

3 A. What... Why don't you take it in a  
4 couple of pieces, and I'll do my best to respond to each  
5 piece.

6 Q. Why do you limit your opinion only to the  
7 scholarship players? What's the difference between any  
8 NIL value attributable to the scholarship players versus  
9 the non-scholarship players, is what I'm trying to get  
10 at.

11 MR. GREENSPAN: Object to the form.

12 THE WITNESS: My assignment was to focus on the  
13 players in the class as it was defined. I didn't have  
14 anything to do with determining what the class should be  
15 or shouldn't be.

16 BY MR. FULLER:

17 Q. So were you instructed not to offer an  
18 opinion with respect to the non-scholarship players that  
19 are basketball and football players?

20 MR. GREENSPAN: Object to the form.

21 And obviously, don't disclose any  
22 communications with counsel. You can discuss your  
23 assignment but...

24 MR. FULLER: I'm not looking for communications  
25 with counsel.

1 Q. I'm trying to figure out if there is a  
2 reason other than an assumption you made or an  
3 instruction you were given as to the scope of your  
4 engagement, which I think is a fair inquiry, that you  
5 did not provide an opinion as to NIL value for  
6 non-scholarship football and basketball players.

7 A. That was beyond the scope of my  
8 assignment.

9 Q. So you're not here to testify about that  
10 because it was beyond the scope of your assignment; is  
11 that correct?

12 A. That's correct.

13 Q. Do you have any opinions that you're  
14 prepared to offer with respect to the topics that are  
15 included in your report with respect to conferences and  
16 schools outside the Power 5?

17 In other words, the Atlantic Sun. The  
18 MAC. The WAC. Any other conference. Does your report  
19 apply to those conferences, or is it limited only to the  
20 Power 5 conferences and Notre Dame?

21 A. The thrust of the report focuses on the  
22 Power 5 conferences. Obviously there are a number of  
23 other Division 1 conferences that are similarly  
24 situated.

25 For the most part, their athletes, as I

1 understand it, are not in the class and therefore are  
2 outside of the scope of what I've done.

3 Q. My question is: Are you prepared to tell  
4 us... It's fine if you say you're not. It's fine if  
5 you say you are. I just don't know.

6 Do the conclusions in your report apply  
7 to conferences outside the Power 5 and Notre Dame? They  
8 don't apply? Or you haven't thought about it and you  
9 can't tell me today, one way or the other?

10 A. I wasn't asked to focus on the other  
11 conferences. I suspect that some of the conclusions  
12 would apply, but I have not studied them or considered  
13 how I might identify and allocate NIL values in those  
14 cases.

15 Q. And so you're not prepared to testify  
16 about whether or in what way the conclusions in your  
17 report would apply outside the Power 5 and Notre Dame  
18 because that has not been what you've been engaged  
19 about? Is that what you're saying?

20 A. Yes, that's correct.

21 Q. Now, you're not an attorney; is that  
22 right, Mr. Desser?

23 A. I am not.

24 Q. And have you ever negotiated a college  
25 broadcast rights agreement?

1 A. Yes.

2 Q. For who?

3 A. The AAC. Also I've done work for a  
4 number of other conferences.

5 Q. I'm not talking about doing consulting.  
6 I'm talking about actually negotiating the agreement as  
7 a representative of a college sports broadcast rights  
8 holder.

9 A. Well, maybe you can be more specific as  
10 to what you mean by negotiated.

11 I've absolutely consulted for several  
12 other conferences in the context of valuing their  
13 agreements, determining strategy for negotiations,  
14 dealing with deal points and all the other things that  
15 are involved in negotiation of a media rights agreement.

16 Q. Have you sat down across the table from  
17 Burke Magnus at ESPN or Sean McManus at CBS or any of  
18 their contemporaries at other networks and actually  
19 hammered out the terms of a rights agreement?

20 A. You said "terms of a rights agreement."

21 Q. For college sports.

22 A. Well, I clearly have negotiated with many  
23 of those individuals over my career. I cannot think at  
24 this time of a negotiation with the individuals that you  
25 mentioned with respect to a college conference package.

1 Q. Or any other college sports package with  
2 those individuals or their peers at other networks?

3 MR. GREENSPAN: Object to the form.

4 THE WITNESS: I've had a wide range of  
5 assignments. I've done a number of assignments for  
6 college sports properties. Those assignments have not  
7 as of yet involved the particular kind of negotiation  
8 that you describe where I was necessarily in the room at  
9 the time.

10 I've done plenty of negotiations in the  
11 room on behalf of a variety of other products.

12 BY MR. FULLER:

13 Q. Such as pro sports products?

14 A. Among them, pro sports products.

15 Q. But with respect to my question, you  
16 haven't sat down and negotiated with those... with the  
17 networks about the college sports products in the way  
18 that I ask it in my question?

19 MR. GREENSPAN: Just to be clear, the "sit across  
20 the table"?

21 MR. FULLER: Right. Right.

22 THE WITNESS: I have advised college conferences  
23 in connection with their negotiations. So in...

24 BY MR. FULLER:

25 Q. But you haven't done the negotiations



1     yourself; is that right?

2             MR. GREENSPAN: Object to the form.

3             MR. FULLER: I think you've already answered  
4     this. I'm just trying to make it clear on the record.

5             THE WITNESS: So if we're talking about me going  
6     to ESPN and sitting in a room with Burke Magnus and  
7     negotiating a deal by myself on behalf of a college  
8     conference, the answer is No.

9     BY MR. FULLER:

10            Q.       And that would also include negotiating  
11     with others in the room. Usually more than one person  
12     is in the room when you do these negotiations; right?

13            A.       Well, as your question seems to indicate,  
14     I'm familiar with those sorts of negotiations and the  
15     number of people who are typically in the room. And I  
16     have done dozens of negotiations of that kind with  
17     respect to a wide range of products.

18            Q.       But for college sports negotiations you  
19     haven't been in the room, so to speak?

20            A.       No.

21            MR. FULLER: Okay. Let's move on to something  
22     else.

23            Q.       Are you providing any opinion as to  
24     whether there is name, image and likeness value that is  
25     a component of broadcast rights for cheerleaders,

1 referees, band members, sports trainers, fans? Is that  
2 part of your report?

3 A. Can you give me a little bit more  
4 specificity as to what you're asking.

5 Q. Do you have a view as to whether when the  
6 camera shows the coach on the sideline or the referee  
7 announcing the results of a call, whether that's a use  
8 of that person's name, image and likeness?

9 A. I believe that is a use of their name,  
10 image and likeness.

11 Q. If we look at Page 7 of your report,  
12 Exhibit 12, you say that:

13 "A principal part of my analysis  
14 is to isolate the value of NIL from the  
15 value of athletic performance on the  
16 field or court (among other things)."

17 Do you see that?

18 A. Yes.

19 Q. Now, I want to focus on that particular  
20 part of your analysis for the next few questions.

21 A. Okay.

22 Q. Do you know of any other situation where  
23 anyone has tried to isolate the value of the NIL from  
24 the value of the athletic performance as you've posited  
25 right here? Are you the first person to try to do this?

1 MR. GREENSPAN: Object to the form.

2 BY MR. FULLER:

3 Q. Have you ever done this yourself  
4 previously? Is this the first engagement where you've  
5 been asked to do that?

6 A. This is the first engagement that focused  
7 on isolating NIL value.

8 Q. Okay. And in your experience with  
9 broadcast agreements, have you ever known a situation  
10 where anyone else has tried to segregate the NIL value  
11 from the value of the broadcast rights package as a  
12 whole?

13 A. I'm not aware of that taking place  
14 before. It's typically not necessary, and therefore  
15 there is not a particular business purpose for the  
16 parties involved in the contracts to go through the  
17 process of creating that allocation.

18 Q. I think you said that it's a holistic  
19 portion of the value in your report; correct? It's part  
20 and parcel of the value?

21 A. You said "it's" ...

22 Q. The NIL portion. Sorry.

23 A. NIL is part of the bucket of rights that  
24 are being conveyed to broadcasters that include a  
25 variety of rights and opportunities inclusive of the

1 opportunity to utilize NIL.

2 Q. If we look at the bottom of Page 6 of  
3 your report, you see there where you say:

4 "NIL is not customarily (if  
5 ever) sold separately from the other  
6 elements conveyed in the contract, with  
7 separate contractual value assigned.  
8 Almost always, the package in a sports  
9 media contract is paid for with an  
10 aggregate payment that does not break  
11 down the value of each component granted  
12 in the contract - indeed, subdividing  
13 the overall payment to be made in a media  
14 rights contract generally would serve no  
15 business purpose."

16 Do you see that? Correct?

17 A. I'm not finding the line but it is  
18 familiar. Can you refer me to a particular paragraph?

19 Q. It's at the bottom of Page 6.

20 A. Okay. I'm sorry.

21 MR. FULLER: Take your time.

22 MR. GREENSPAN: He started reading here  
23 (INDICATING).

24 THE WITNESS: Yes, I believe that is what I was  
25 referring to in my previous answer.

1 BY MR. FULLER:

2 Q. And there is a portion of your report  
3 where you show pictures of participants in broadcast  
4 with their faces covered up; right? Their faces?

5 A. Yes. I think that's Section 9, if I  
6 remember correctly.

7 Q. It's on Page 43.

8 A. It starts on 41.

9 Q. If you showed the faces of the players in  
10 the broadcast but you didn't include the game action, it  
11 wouldn't be a broadcast either; correct? You've got to  
12 have both.

13 A. I agree.

14 Q. Let's talk for a moment about factors  
15 that can affect the value of broadcast rights.

16 In some broadcast rights agreements the  
17 rights granted an entity gets commercial spots and other  
18 promotional value; is that correct?

19 A. Sometimes.

20 Q. But not in every agreement?

21 A. Not in every agreement.

22 Q. And that is a factor that goes to the  
23 value of the contract; right?

24 If ESPN is providing ACME Conference with  
25 free promotional spots as part of the package, then ESPN

1 can't sell those commercial spots to some other third  
2 party; correct?

3 A. Um, I'm not trying to be flippant, but I  
4 don't think there is an ACME Conference.

5 MR. FULLER: I was using it as a generic term.

REDACTED - NSC

13 Q. Another thing that can affect the price  
14 of the rights has to do with the objectives of the  
15 rights holder; right?

16 For example, I think you testified in a  
17 prior case that the Rose Bowl Parade's objective is to  
18 publicize the Rose Bowl as opposed to maximizing the  
19 revenue. Do you remember that?

20 A. (NO AUDIBLE RESPONSE)

21 Q. I've got it. We can pull it out.

22 A. I mean, I don't specifically remember the  
23 testimony. If you want me to answer questions on that  
24 to any deep extent, I would need to look at the  
25 document.

1 MR. FULLER: You want to pull that out.

2 I was using it as an example mostly so  
3 that you would understand the nature of what I was  
4 asking you about, Mr. Desser.

5 Q. And what I'm asking you about is that  
6 rights holders often have various different motivations,  
7 and maximizing revenue is not the sole motivation; is  
8 that correct?

9 A. It depends on the rights holder.

10 Q. It varies from circumstance to  
11 circumstance?

12 A. It varies in various circumstances. But  
13 I would point out that your example of the Rose Bowl  
14 Parade is not a sports event.

15 MR. FULLER: I was simply using it for an  
16 illustration.

17 Q. So you've looked at the media agreements  
18 that have been produced in this case; is that right?

19 A. I've looked at a large number of redacted  
20 or partially redacted media agreements.

21 THE VIDEOGRAPHER: Excuse me, Counsel. Can you  
22 move to your...

23 MR. FULLER: Oh, sorry. Apparently I'm not a TV  
24 guy. I'm blocking the camera.

25 Q. Have you noticed that many of those

1 agreements have requirements as to the number of games  
2 to be broadcast or distributed in various --

3 A. Number of which agreements?

REDACTED - NSC

9 A. Generally speaking, it is commonplace for  
10 a license agreement to set forth the minimal amount of  
11 usage of particular platforms.

12 Q. Because there's a value to the SEC in  
13 exposing, for example, its women's basketball, its  
14 volleyball, its soccer to more viewers; correct?

15 A. Generally speaking, there is a value to  
16 the conference, to the schools, to exposing their  
17 properties. And there's typically a balancing act that  
18 is done between maximizing exposure and maximizing  
19 revenue.

20 Q. And is that a balancing act that can be  
21 quantified? Have you ever seen anybody put a price on  
22 the value of the additional exposure?

23 MR. GREENSPAN: Object to the form.

24 THE WITNESS: I've certainly seen estimates of  
25 promotional value that are part of agreements. So it is



1 something that can be done.

2 BY MR. FULLER:

3 Q. Did you do any such estimates in your  
4 work in this case?

5 A. And here we're talking about the  
6 promotional value of commercial time in telecasts, or  
7 something else?

8 Q. The topics that we've just been  
9 discussing, did you do any analysis of the type we just  
10 discussed in preparing Exhibit 12?

11 MR. GREENSPAN: Object to the form.

12 THE WITNESS: That... That would have been  
13 outside the scope of what I was asked to do.

14 BY MR. FULLER:

15 Q. So the answer is you did not do that  
16 analysis in connection with your report here; --

17 MR. GREENSPAN: Same objection.

18 BY MR. FULLER:

19 Q. -- because you weren't asked to do it?

20 A. I will stipulate that there is  
21 promotional value to media rights agreements and that it  
22 is an important part of the value that is exchanged.  
23 But that was not something that I was asked to focus on  
24 as a core of this project.

25 Q. And there's no analysis in any of the

1 materials that have been provided to us that attempts to  
2 say: Well, there's a value that's being provided to the  
3 rights holder here because they're guaranteed wider  
4 distribution than other rights holders in other  
5 contracts.

6 That's just not an element of the  
7 analysis that you did?

8 A. (NO AUDIBLE RESPONSE)

9 Q. I think you've already answered that  
10 "Yes," I just want to make sure.

11 A. That is something which is often done in  
12 the context of valuing agreements prior to negotiations.  
13 It's not something that was requested in this particular  
14 project.

15 Q. So you did not do it here; correct?

16 A. I can't think of anything which is  
17 directly on point in this report.

18 Q. So my statement is correct; you did not  
19 do that. You would know whether you did the analysis;  
20 right?

21 A. Well, I did analysis. I mean, I do  
22 reference promotional value. I do reference various  
23 elements of agreements. So I don't want to be exclusive  
24 in terms of saying that I didn't do anything with  
25 respect to promotional value.

1                   Because there is... there are elements of  
2 promotional value that are covered. But this is not a  
3 report about promotional value.

4           Q.           And you didn't try to quantify whether  
5 one conference has obtained more promotional value than  
6 another conference in its various media agreements.

7                   There is no quantification in any of the  
8 documents that have been provided to us -- right -- of  
9 that nature?

10          A.          I can't say as to whether something has  
11 been provided to you or not. I can tell you that that  
12 was not part of my assignment here.

13          Q.          So nothing you're aware of anyway?

14          A.          Correct.

15          MR. FULLER: Now, another... Why don't we see if  
16 we can move along efficiently here.

17          Q.          I'm going to give you a list of things  
18 that I think might or might not be relevant to  
19 determining the value being exchanged in a broadcast  
20 rights agreement, and you tell me whether you agree or  
21 disagree that these are relevant to determining the  
22 value being provided and received by the rights holder  
23 and the network.

24                   Fair enough?

25          A.          Can you repeat the question?

1 MR. FULLER: Can you read that back to me,  
2 please.

3 (THE RECORD WAS READ AS FOLLOWS:

4 Q. I'm going to give you a list  
5 of things that I think might or  
6 might not be relevant to determining  
7 the value being exchanged in a broadcast  
8 rights agreement, and you tell me  
9 whether you agree or disagree that  
10 these are relevant to determining the  
11 value being provided and received by  
12 the rights holder and the network.

13 Fair enough?)

14 MR. GREENSPAN: And I'll object to the form.

15 MR. FULLER: I wanted her to read it back.

16 Do you understand the question? If not,  
17 I'm glad to rephrase it.

18 THE WITNESS: I would prefer that you rephrased  
19 it because it seemed to be somewhat compound.

20 MR. FULLER: You've learned about the objections  
21 to questions in your testimony experience: Compound.  
22 Leading.

23 THE WITNESS: I was just having trouble  
24 understanding exactly what you wanted me to say.

25 MR. FULLER: No, that's fair. I'm not being

1 critical. It was a very long question. I have no  
2 problem rephrasing.

3 Why don't we go at this a different way  
4 that may make it simple.

5 Q. Are you familiar with the concept of  
6 different tiers of rights? First Tier rights, Second  
7 Tier rights, Third Tier rights, in the context of  
8 college sports media rights agreements?

9 A. Yes, generally.

10 Q. Tell me what you understand those to mean  
11 so we can make sure we're on the same page and then  
12 we'll go from there.

13 A. The tiers generally refer to a  
14 combination of sort of quality of product and platform  
15 utilized. It's a bit antiquated today.

16 It refers to a time when there were  
17 broadcast rights, national television broadcast rights  
18 sold separately from syndication rights or cable rights.

19 And then there were various rights  
20 sometimes retained by individual schools and sort of  
21 colloquially those are the traditional three tiers.

22 However, as the industry has evolved, the  
23 term is not really always applicable. For example, the  
24 SEC recently did a deal that you're probably aware of  
25 with ESPN and they have many tiers included in the

1 single agreement.

2 Q. So let's use the SEC for an example.  
3 You're generally familiar with the SEC's media rights  
4 structure; is that correct, Mr. Desser?

5 A. I'm generally familiar, but if you are  
6 going to ask me about a particular detail of an  
7 agreement, I'm going to need to see the agreement.

8 MR. FULLER: That's fair enough. I'm using this  
9 only for illustrative purposes.

REDACTED - NSC



REDACTED - NSC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15                   So what I'm trying to get at is that's  
16 sort of the historical rights structure with these  
17 different rights to different pick order, different  
18 games, different platforms of distribution.

19                   You're generally familiar with that;  
20 correct?

21           A.       I'm generally familiar with what you  
22 described, and that is consistent with my understanding  
23 of that period of time. So, go ahead.

24           Q.       And in more recent times, there have been  
25 other forms of distribution: Internet, YouTube TV, Hulu

1 TV, Amazon. Some conferences have created networks with  
2 broadcast networks.

3 So the media landscape has evolved, I  
4 think is the way you put it before. You would agree  
5 with that?

6 A. Yes.

7 Q. And I believe that you have testified in  
8 the past that the... Let me find my notes and make sure  
9 I get this correct.

10 Sometimes a particular event will get  
11 better ratings and more viewership on one network than  
12 another because of the composition of the viewing  
13 audience, the promotional activities of the network.

14 So different platforms for distribution,  
15 different networks are not all the same; right? I mean,  
16 they bring different values and benefits to the rights  
17 equation?

18 MR. GREENSPAN: Object to the form. I'm not sure  
19 where his prior testimony begins and ends in your  
20 question, and the question is about the prior testimony.

21 MR. FULLER: Let me see the O'Bannon deposition.

22 I don't know, do you want to mark this or  
23 you want to just let him refresh himself?

24 MR. GREENSPAN: Why don't we mark it so we have  
25 it.



1 MR. FULLER: Okay. This will be Exhibit  
2 Number 13.

3 (THE DOCUMENT REFERRED TO WAS  
4 IDENTIFIED AND WAS MARKED AS  
5 EXHIBIT 13 TO THE DEPOSITION)

6 MR. GREENSPAN: This was across the street.

7 THE WITNESS: I thought I remember it being in  
8 this neighborhood.

9 MR. FULLER: There is a type-o in my notes. We  
10 shall come back to this when I get my notes sorted out  
11 after the next break. There's no reason to delay here.

12 Q. Would you agree with me that the ability  
13 to do beer and liquor advertising affects the value of a  
14 rights agreement?

15 A. (NO AUDIBLE RESPONSE)

16 Q. In other words, if the agreement prevents  
17 the network from running liquor ads or beer ads or  
18 limits the number of ads, that affects the value of what  
19 the network is receiving; correct?

20 A. As a general matter, a restriction on  
21 categories could have a negative value. It could  
22 present a negative situation with respect to maximizing  
23 value.

24 Q. And you've seen that there is... that's a  
25 negotiated term in many of these college agreements,

1 what type of advertising can occur, including the  
2 availability, if any, of beer and liquor advertising?

3 A. Yes.

4 Q. Another factor that impacts the value of  
5 rights is the cost of producing the event; right?

6 A. That is a material element that goes into  
7 considering what broadcaster will bid.

8 Q. And that varies from broadcast property  
9 to broadcast property depending on the location of the  
10 games, the number of games, the accessibility of the  
11 event, any number of factors that are unique to each  
12 property that's being addressed; correct?

13 A. Yes. There are quite a number of  
14 variations as to the type of product, location, setup in  
15 an arena or a stadium.

16 Q. And did you do any analysis of the cost  
17 of producing games under any of these agreements, as  
18 part of your work here?

19 A. It is something that is addressed but is  
20 not a focal point of the report.

21 Q. In what way is it addressed?

22 A. The... The... As an example, the notion  
23 of producing a telecast and excluding NIL from that  
24 telecast, what that would do to the nature of what was  
25 being presented and, you know, that would require

1 certain production techniques to be employed.

2 MR. FULLER: That's not the type of production  
3 costs that I was actually intending to refer to. So let  
4 me see if I can clarify my question so we can get on the  
5 same page.

REDACTED - NSC

12 Did you do any comparison of the terms of  
13 various conferences' media agreements from the  
14 perspective of whether the network, the conference or  
15 the schools bears the production cost?

16 A. There is no separate section in the  
17 report about production costs specifically.

18 It is typical that particularly for  
19 Tier 1 and Tier 2 events, as you previously referred to  
20 them, that the network buying the rights is usually  
21 responsible for that production. And in effect, the  
22 rights fees reflect the fact that they have that job to  
23 do.

24 Q. But you haven't done any analysis to  
25 determine how the production cost obligations are

1 allocated in the agreements of The Big Ten versus The  
2 Big 12 versus the PAC-12 versus the ACC versus the SEC,  
3 and whether particular events are more or less costly in  
4 some of those conferences than others to produce?

5 A. I have not gone to that level of detail  
6 at this point.

7 Q. The value of rights also is dependent at  
8 least in part on the projected demographics of the  
9 audience; would you agree with that? Of the viewership  
10 audience?

11 A. Well, demographics are part of the  
12 valuation equation as is audience size, which is  
13 probably just as important.

14 Q. I've often heard in the broadcast world  
15 that the AFC package of NFL games is more valuable than  
16 the NFC package of NFL games.

17 Is that correct?

18 A. There isn't really the AFC and NFC  
19 package like there used to be.

20 Q. And the reason for that is because they  
21 were trying to switch the games around to equalize the  
22 value of the packages; is that correct?

23 MR. GREENSPAN: Object to the form.

24 MR. FULLER: I think he knows what I'm talking  
25 about. But if he doesn't, he can tell me and we'll

1 clarify.

2 THE WITNESS: I believe what the NFL has done is  
3 I think they're trying to maximize their overall  
4 ratings. And the previous rigid structure of dividing  
5 games between NFC and AFC packages was not the optimal  
6 way to do that.

7 BY MR. FULLER:

8 Q. And they also found that when they were  
9 putting those packages out to bid, segregated between  
10 AFC and NFC, that they were getting more money for the  
11 AFC package than they were for the NFC package.

12 I mean, with your expertise, you're aware  
13 of that. You know that's part of the industry.

14 MR. GREENSPAN: Objection.

15 THE WITNESS: That has not always been the case,  
16 actually.

17 BY MR. FULLER:

18 Q. So the packages vary in value depending  
19 on which team's games are in which package?

20 A. So we're talking about the NFL and the  
21 Sunday afternoon packages that are currently shown on  
22 CBS and Fox Networks.

23 The value of those packages is naturally  
24 a function of the games that ultimately are placed in  
25 those packages.

1 Q. Because some games, some teams, have more  
2 value than others. So when you move games around within  
3 packages, you change the value of the package; is that  
4 what you're saying? I just want to make sure I  
5 understand.

6 A. Well, let's be clear. When these deals  
7 are negotiated years and years ahead of time, we don't  
8 know which games are going to be more valuable or less  
9 valuable.

10 Q. But you try to forecast to determine  
11 which will be more valuable and what the value will be.  
12 That's part of the process of bidding on rights;  
13 correct?

14 A. There is a lot that goes in to the  
15 bidding for rights.

16 Q. But that's one of the things that goes in  
17 to it, is trying to forecast the attractiveness of the  
18 package of games that you're buying, if you're a  
19 broadcaster?

20 A. Well, let me put it this way. If you had  
21 a package that, all things being equal, had the Super  
22 Bowl and another package that didn't have the Super  
23 Bowl, I believe that the package with the Super Bowl  
24 would be more valuable.

25 Q. If you had a package that had the Dallas

1 Cowboys every week and you took out the Dallas Cowboys  
2 and you had Tampa Bay every week, the package would go  
3 down in value; correct?

4 A. (NO AUDIBLE RESPONSE)

5 Q. There's some teams that have more  
6 broadcast value historically than others?

7 A. Well, I suppose it depends whether Tom  
8 Brady is playing or not.

9 Q. Because the individual participants drive  
10 part of the value of these TV packages; correct?

11 A. I think that's the core of my report, is  
12 focusing on just how important the people are that  
13 appear in these telecasts.

14 Q. And by the example that you just gave,  
15 Tampa Bay is much more valuable with Brady than without  
16 Brady; is that right?

17 A. Generally speaking, Tampa Bay with Brady  
18 is more valuable. It may not always be the case if  
19 they've been eliminated from playoff contention or any  
20 one of many other circumstances that probably don't pay  
21 to speculate about.

22 Q. Do you remember who the quarterback at  
23 Tampa Bay was before Brady got there?

24 A. I do not.

25 MR. FULLER: Neither do I.

1 Q. So the point I'm getting at is that  
2 different players have different values that they bring  
3 to the broadcast. That's what you're saying; correct?

4 MR. GREENSPAN: Object to the form.

5 THE WITNESS: That may be the case. It can be  
6 the case. It... There are many other things that also  
7 bear on the value of a particular game's value.

8 BY MR. FULLER:

9 Q. Another thing that affects the value of a  
10 package is the timing of the broadcast. In other words,  
11 is it Sunday afternoon? Is it Saturday afternoon? Is  
12 it Thursday night? Is it Wednesday night?

13 Because that goes to how many viewers can  
14 be expected and other... It has various affects on the  
15 value of the package of rights; is that correct?

16 A. Schedule is one of the variables in a  
17 media rights agreement that is quite common.

18 Q. That affects value?

19 A. It can frequently affect value.

20 Q. Did you examine any of the agreements  
21 that are produced in this case, to determine how much  
22 scheduling flexibility was retained by the rights  
23 holders versus how much was ceded to the broadcasters,  
24 and compared one to the other?

25 A. That's really beyond the scope of what I



1 was asked to do.

2 Q. So the answer is: "No" you did not do  
3 that?

4 A. I focused on the allocable value of NIL  
5 rights as part --

6 MR. FULLER: I know.

7 Q. I don't want to know what you did. I  
8 just want to know if this is something that you did not  
9 do.

10 And I think you said you did not do what  
11 I just talked about.

12 A. I did not do that particular analysis in  
13 this project because that was beyond the scope.

14 Q. Another factor that can create value or  
15 diminish value has to do with back end rights; correct?

16 A. Yes.

17 Q. Whether or not a contract has a provision  
18 in it that gives the current broadcaster a right of  
19 first negotiation for a new deal and/or a right of first  
20 refusal, that dramatically affects value; correct?

21 A. It can, depending on the circumstances.

22 Q. Because it can impede getting to the open  
23 market to put your rights out to bid if you have to  
24 navigate through a first negotiation and first refusal  
25 with your current broadcast counter-party; correct?

1 A. That... That can indeed occur.

2 Q. And that... So what I said is correct,  
3 it can impact the value; correct?

4 A. We need to parse it a little bit.  
5 Because where you're going to see that value impacted  
6 will be in the subsequent agreement.

7 Q. So whether it's in the current agreement,  
8 the subsequent agreement or a series of agreements, that  
9 term has a value impact; correct?

10 A. There are many kinds of back end rights  
11 structured in different ways. They're different  
12 processes.

13 As a general matter, they have an impact  
14 on the process that takes place at the end of an  
15 agreement and can impact what happens at the end of a  
16 renegotiation process with respect to a subsequent  
17 agreement.

18 Q. Did you do any analysis of the  
19 different... of the differences or similarities, if any,  
20 of the back end rights provisions in the various  
21 conference and NCAA agreements in this case?

22 A. I would have liked to look at that. But  
23 those terms were generally redacted, over my objection.

24 Q. So you did not do the analysis because  
25 you could not access the terms?

1           A.           I did not do that analysis. I wanted to  
2 understand those points, but I was foreclosed from  
3 having that opportunity.

4           Q.           With respect to name, image and likeness,  
5 there are different ways in which name, image and  
6 likeness rights are used; correct?

7                       For example, you say that they are part  
8 of the broadcast. They can be used to promote the  
9 broadcast. They can be used to promote products and  
10 goods unrelated to broadcast.

11                      There's a variety of ways in which name,  
12 image and likeness rights are licensed, many of which  
13 are covered in your report; correct?

14          A.           Yes. That's correct.

15          Q.           And I believe that you draw a distinction  
16 between the use of name, image and likeness rights in a  
17 broadcast and the use of name, image and likeness rights  
18 to promote a broadcast? Is that correct?

19          A.           Those are different ways that NIL are  
20 used, both in the context of broadcast agreements and  
21 the opportunity to do both. And in fact, the obligation  
22 to do both is typically included in those agreements.

23          Q.           If you look at Page 41 of Exhibit 13...  
24                       They're little. There's four pages on  
25 each page.

1 A. Okay. What page are we looking for?

2 Q. 41.

3 A. Okay. I have Page 41 in front of me.

4 MR. FULLER: This is your deposition in the  
5 O'Bannon case, Mr. Desser.

6 Q. You're asked:

7 "So the rights to use the player's  
8 likeness in an endorsement is different  
9 from the right" --

10 THE REPORTER: Slower. Slower. Slower, please.

11 MR. FULLER: Sorry.

12 Q. "So the rights to use the player's  
13 likeness in an endorsement is different  
14 from the right to use it in the live  
15 broadcast itself?"

16 And your answer is: "Those two  
17 uses are treated differently in the  
18 agreements."

19 And then you can keep on reading it, if  
20 you want to. But that's what I'm referring to.

21 (DOCUMENT IS REVIEWED)

22 MR. FULLER: Let's mark this Exhibit 14. This is  
23 his trial testimony in O'Bannon.

24 ///

25 ///

1 (THE DOCUMENT REFERRED TO WAS  
2 IDENTIFIED AND WAS MARKED AS  
3 EXHIBIT 14 TO THE DEPOSITION)

4 BY MR. FULLER:

5 Q. Have you had a chance to read what's on  
6 Page 41 of Exhibit Number 13?

7 MR. GREENSPAN: Exhibit 13 is the deposition  
8 testimony, and you are asking just about the one Q and A  
9 on Page 41?

10 MR. FULLER: That's right. I wanted him to read  
11 that.

12 Q. Now look at Page 685 of Exhibit 14.

13 If you look at the top...

14 MR. GREENSPAN: I apologize. What page are we on  
15 in the trial testimony?

16 MR. FULLER: 685.

17 MR. GREENSPAN: Thanks.

18 MR. FULLER: Line 1.

19 Q. Kelly Klaus asked you:

20 "And it is your understanding, sir,  
21 in the broadcast industry, it is  
22 generally understood that promoting or  
23 publicizing a broadcast is not the same  
24 thing as the actual broadcast?

25 "Is that your understanding?"

1                   And you said: "That's correct."

2                   Do you see that?

3           A.        I see that.

4           Q.        Do you still agree with that testimony?  
5   Was that... Is that testimony correct now?

6           A.        I'm going to need to understand what the  
7   context is. So I'm going to have to read a little bit  
8   back, so if you can give me a moment.

9           MR. FULLER: Sure.

10                   (DOCUMENT IS REVIEWED)

11           MR. FULLER: Mr. Desser, let us know when you're  
12   done. Take your time.

13           THE WITNESS: All right. I think I'm ready, but  
14   depending on where your questions go I may need to look  
15   at some more.

16           MR. FULLER: I guess my question is simple.

17           Q.        Your testimony in the O'Bannon case that  
18   you just read, is there any reason now that you've  
19   studied it in context that you believe that testimony is  
20   incorrect? The testimony at the top of Page 685,  
21   Lines 1 through 6?

22           A.        The trial testimony.

23           Q.        The trial testimony. Exhibit Number 14.

24           A.        I stand by the testimony in the context  
25   in which it was provided.

1           Q.           My question to you is: With respect to  
2 the NIL components that you say are part of the  
3 broadcast themselves, because they're an integrated part  
4 of the broadcast there's no market for those components  
5 to be bought or sold separately; right?

6                   You can't buy the NIL component of the  
7 broadcast without buying the rights to broadcast the  
8 game. In your view, you can't buy the rights to  
9 broadcast the game without buying the NIL component.

10                   Is that correct?

11           A.           Well, your summary is, I think, a little  
12 broader. But directionally those two things are  
13 integrated, and I'm not aware of a broadcast market  
14 where they're sold separately.

15                   I do focus later in my report on things  
16 like video games, where in a video context those  
17 opportunities are transacted.

18           MR. FULLER: I'm focused solely on the broadcast  
19 rights right now.

20           Q.           And in the broadcast rights transfer, in  
21 your view you cannot broadcast the game without the NIL  
22 rights. And having the NIL rights in the broadcast has  
23 no value unless you have the rights to effectuate the  
24 broadcast itself, the other 90 percent that you talk  
25 about.

1           A.           I don't think it's fair to say that there  
2   is no value to the NIL rights separately. The fact is  
3   that they are customarily and almost exclusively  
4   packaged when they are sold.

5           Q.           And you don't know of any situation where  
6   the NIL rights in a broadcast have been sold separately  
7   from the broadcast rights, because they're an integrated  
8   part of the whole. I think that's the whole focus of  
9   your report; correct?

10          A.           Yes.

11          MR. FULLER:   Okay.

12          Q.           With respect to the promotion of the  
13   broadcast, did you assign any difference in value to the  
14   NIL rights to promote the broadcast as opposed to the  
15   NIL rights to actually effectuate the broadcast? Is  
16   that a distinction that's drawn anywhere in your report?

17          A.           No. Typically those things are also  
18   bundled.

19          Q.           You're familiar with the opening of  
20   Monday Night Football where they often have a musician  
21   singing about Monday Night Football, promoting the  
22   broadcast; right? I can't remember the woman's name.  
23   It used to be Hank Williams, Junior.

24          A.           Hank Williams.

25          Q.           You know what I'm talking about; right?



1           A.           Well, I wouldn't call that a promotion of  
2 the broadcast. That's the opening of the broadcast.

3           MR. FULLER: All right. We'll come back to that  
4 a little later.

5           Q.           Have you talked to any student athletes  
6 in connection with your work in preparing this report?  
7 Obtained any input from any student athletes?

8           A.           No.

9           Q.           Have you considered... Do you know what  
10 Title 9 is?

11          A.           I've heard of it.

12          Q.           Have you given any consideration to  
13 Title 9 in your preparation of this report?

14          A.           That's not within the scope of what I was  
15 assigned to work on.

16          Q.           So the answer is: "No" you have not  
17 given any consideration to it, because you weren't asked  
18 to do that?

19          A.           No, I have not.

20          Q.           Did you know that there are laws in some  
21 states that prohibit universities, colleges and  
22 conferences from paying student athletes for NIL rights?

23          A.           I am not an expert in state laws.

24          Q.           I just want to know whether you knew that  
25 those laws existed?

1           A.           Only in a very general way. I couldn't  
2 tell you where they exist or what their impact is.

3           Q.           In any event, you did not give any  
4 consideration to those laws in preparing your report?

5           A.           Well, I didn't give consideration to  
6 specific state laws, but I gave consideration to the  
7 fact that...

8           MR. FULLER: Let me stop you, because I think  
9 you're headed in a direction that I'm not going, and  
10 we'll go there later.

11                   I'm not talking about the laws that  
12 address whether or not there is an NIL right in the  
13 broadcast.

14           Q.           I'm talking about a different set of laws  
15 that affirmatively state that in a certain state that it  
16 is prohibited for conferences or schools, colleges and  
17 universities, to pay student athletes for NIL rights.

18                   I can show you an example, if that will  
19 help.

20           MR. GREENSPAN: Sorry. The question is if he's  
21 aware of...

22 BY MR. FULLER:

23           Q.           I want to know if you were aware of those  
24 laws; and if so, if you took them into account, in any  
25 respect, in preparing your report?

1           A.           I have heard of various law-making in  
2 particular jurisdictions, without specificity, having to  
3 do with the general topics here going in various  
4 directions.

5                       I don't claim at all to be an expert or  
6 be particularly knowledgeable about any of the details.

7           Q.           I'll represent to you that there are some  
8 states' laws that on their face prohibit schools and  
9 conferences, universities and conferences, from paying  
10 for NIL rights. And that in other states, there are  
11 laws that invalidate the rules in the NCAA that prohibit  
12 schools and conferences from paying for NIL rights.

13                      California is an example of the latter.  
14 Somewhere in my notes, I've got several examples of the  
15 former.

16                      My question is simple. Whatever those  
17 laws may say, they are not something you've considered  
18 in connection with preparing your report?

19           A.           As I said, I'm not a lawyer. I don't  
20 specialize in particular state laws. And that would be  
21 beyond the scope of what I was asked to do.

22           Q.           So you have not considered those in  
23 connection with preparation of your report. For  
24 whatever reason, the answer is they haven't been part of  
25 your analysis.

1           A.           Except with respect to the issue that  
2     differing state laws, notwithstanding a broadcaster that  
3     operates on a national basis, needs to have clearances  
4     that cover the entire country and potentially the entire  
5     world.

6           MR. FULLER: I understand you've considered that.  
7     That's in your report. But that's a different set of  
8     laws.

9           Q.           I'm talking about the laws that deal with  
10    whether NCAA rules that prohibit schools from paying for  
11    NIL rights are invalidated, and the polar opposite. In  
12    some states there are laws that state that the school  
13    and conference cannot pay for NIL rights.

14                    You understand what I'm saying? Whether  
15    you're familiar --

16           A.           I understand what you're saying, and I do  
17    not claim expertise on the subject, and it is beyond the  
18    scope of my report.

19           Q.           So you didn't consider it, in preparing  
20    your report, because it's beyond the scope of your  
21    report?

22           A.           Correct.

23           MR. FULLER: Okay. I think this might be a good  
24    time for a break.

25           MR. GREENSPAN: Okay.

1 THE VIDEOGRAPHER: We are off the record at  
2 10:42. This is the end of Disk 1.

3 (WHEREUPON A RECESS WAS HELD  
4 FROM 10:43 A.M. TO 11:02 A.M.)

5 THE VIDEOGRAPHER: Back on the record at 11:02.  
6 This is the beginning of Disk 2.

7 MR. FULLER: Mr. Desser, I have shown you a  
8 document marked as Exhibit 15.

9 (THE DOCUMENT REFERRED TO WAS  
10 IDENTIFIED AND WAS MARKED AS  
11 EXHIBIT 15 TO THE DEPOSITION)

12 BY MR. FULLER:

13 Q. Have you ever seen that before?

14 A. I may have, but I'm not certain.

15 Q. I'll represent to you that it's a  
16 declaration that was filed by the Plaintiffs in this  
17 case, from the NFL Players Association's president, as  
18 shown on the first page. If you look in Paragraph 1.

19 A. Yeah, it's looking familiar.

20 Q. Let's look at... Well, let me ask you  
21 this. One of the things that you rely on in your report  
22 are the group licenses that are entered into by the NFL  
23 and NBA players associations?

24 MR. GREENSPAN: Object to the form.

25 THE WITNESS: That's correct.

1 BY MR. FULLER:

2 Q. Let's look at Exhibit Number 15.  
3 Paragraph 8 quotes from the individual player contracts  
4 with the NFL clubs and reflects an assignment to the  
5 players association of the group license that's  
6 applicable when five or more NFL player rights are  
7 involved.

8 Is that correct?

9 A. I see Paragraph 8, and I do see the  
10 reference to five NFL player Rights.

11 Q. And those are the group licenses that  
12 you're referring to in your report? At least one of the  
13 group licenses; correct?

14 A. Give me a moment so that I can answer  
15 your question.

16 (DOCUMENT IS REVIEWED)

17 A. Can you repeat the question, please?

18 MR. FULLER: I'll ask it a different way.

19 Q. Paragraphs 8 and 9 of Exhibit 15 refer to  
20 group licenses. I didn't refer to Paragraph 9 before,  
21 but just to call your attention to it.

22 Are you aware of any other group licenses  
23 at the NFL players association level other than the two  
24 that are referred to here in Paragraphs 8 and 9?

25 MR. GREENSPAN: Object to the form.

1                   Could you read back the question.

2           (THE RECORD WAS READ AS FOLLOWS:

3           Q.     Are you aware of any other group  
4           licenses of the NFL players association  
5           level other than the two that are referenced  
6           here in Paragraphs 8 and 9?)

7           THE WITNESS: I am generally aware of the NFL  
8           group licenses. I'm not an expert on NFL group  
9           licenses.

10                   There may or may not be other licenses.  
11           I can't tell you whether this is exhaustive or not.

12           BY MR. FULLER:

13           Q.     You don't know of any others. There may  
14           be, you just don't know?

15           A.     I do not know.

16           MR. GREENSPAN: Object to the form.

17           BY MR. FULLER:

18           Q.     Paragraph 11 of Exhibit Number 15 states  
19           that PI... Which stands for the players association.

20                   "PI's licensing portfolio consists  
21           of four main categories: apparel, non-apparel  
22           (or hardlines), digital gaming, and  
23           sponsorship."

24                   And then it gives examples that include  
25           jerseys, trading cards, and so forth.

1 Do you see that?

2 A. Yes.

3 Q. If you go over to Paragraph 22 of  
4 Exhibit 15, it excerpts Paragraph 4(a) of the standard  
5 NFL player contract.

6 Do you see that?

7 A. I see Paragraph 22 and the inserted  
8 language from a Paragraph 4.

9 Q. And if you look at Exhibit Number 12,  
10 that's the same language that you quoted on Page 27,  
11 under Section 6.8, in your report.

12 Is that correct?

13 A. I'm sorry. What was the citation from  
14 the report?

15 MR. FULLER: Page 27.

16 Q. You've put in an ellipses but it's the  
17 same language, I believe. Take your time and confirm  
18 that.

19 A. If you're asking me to double-check that  
20 it's all the same language, it's going to take me a few  
21 minutes.

22 MR. FULLER: Take your time.

23 MR. GREENSPAN: Do you want to just represent  
24 they're the same or...

25 MR. FULLER: I'm glad to represent that, as long



1 as you're willing to accept that, David. I just don't  
2 want him to feel...

3 MR. GREENSPAN: Yes. Yeah.

4 MR. FULLER: They are the same.

5 THE WITNESS: Okay.

6 BY MR. FULLER:

7 Q. The NFL player contracts include the  
8 compensation to the player for playing in the games;  
9 right? You understand that?

10 A. To the best of my knowledge.

11 Q. "Yes."

12 A. Yes.

13 Q. And some NFL players make as much as  
14 \$50 million a year. Did you know that?

15 A. I don't know that I could quote a  
16 particular amount.

17 Q. Did you know that the NFL minimum is  
18 \$660,000? I think that's in the affidavit or  
19 declaration that's marked as Exhibit 15 somewhere.

20 A. I don't know that for a fact.

21 Q. But you would agree with me that NFL  
22 players' salaries and compensation under the player  
23 contracts can be vastly different.

24 Tom Brady makes a whole lot more money  
25 than someone who doesn't play very much on the Tampa Bay

1     Buccaneers. I mean, we all know that to be the case;  
2     right?

3             A. I don't know what we all know. I can  
4     just speak for myself.

5             I'm aware that there is a variety of  
6     different salaries paid to NFL layers. Although I'm not  
7     an expert on NFL salaries.

8             Q. You would agree with me that the  
9     provisions in the NFL player contracts that deal with  
10    publicity rights in broadcast are excerpted in  
11    Section 6.8 of your report, on Page 27 of Exhibit 12,  
12    and are also reproduced here in Paragraph 22 of  
13    Exhibit 15.

14            The point of my question being: These  
15    are the provisions relevant to NIL rights in broadcast;  
16    correct?

17            MR. GREENSPAN: Object to the form.

18            THE WITNESS: I can't speak to what is in the  
19    declaration, Exhibit 15, to...

20            It is my understanding that the language  
21    that I excerpted in my report, which was provided for me  
22    by counsel, is the language from the applicable  
23    agreements.

24    BY MR. FULLER:

25            Q. The player contracts? I believe that's

1 what it says.

2 A. Yes.

3 Q. And it says in here that the player...

4 And I'm reading in the last paragraph on Page 27:

5 The Player and National Football League

6 Players Association and its affiliates confirm the...

7 And I'm paraphrasing here, so you tell me if I'm

8 omitting something that you think is important.

9 ... confirm the exclusive rights of the

10 league and the club to broadcast the games. And it also

11 goes so far as to say that the player will not contest

12 those rights.

13 Is that correct?

14 MR. GREENSPAN: Object to the form.

15 THE WITNESS: The language says what it says.

16 I'm not in a position to opine on the details of NFL

17 player contracts.

18 BY MR. FULLER:

19 Q. You do rely on those contracts in your

20 report, though; right?

21 A. Well, I don't rely on the individual

22 contracts. I rely on the language that was excerpted

23 from those contracts that is, as I understand it,

24 standard language.

25 Q. And do you understand that the language

1 that deals with NIL rights in broadcast for NFL players  
2 is in the standard player contract, pursuant to which  
3 players receive different levels of compensation.

4 Is that right?

5 A. Yes. That's correct.

6 Q. And you also understand that the terms of  
7 these player contracts are negotiated holistically;  
8 there is no separate negotiation for the NIL value in  
9 the broadcast from the performance value in the  
10 broadcast; correct?

11 MR. GREENSPAN: Object to the form.

12 BY MR. FULLER:

13 Q. In other words, the NIL rights in the  
14 broadcast and the performance of the player in the games  
15 is bundled together in one contract for which a single  
16 price is negotiated by the team; is that right?

17 MR. GREENSPAN: Same objection.

18 THE WITNESS: If I understand your question,  
19 there is no... You're asking me if there is a separate  
20 price, a separate portion of salary delineated in the  
21 player agreements for NIL as opposed to performance on  
22 the field.

23 MR. FULLER: Correct.

24 Q. And the answer is: There is not;  
25 correct?

1           A.           You're doing a very good job of doing my  
2 deposition.

3           MR. FULLER: No. I want to make sure I'm stating  
4 that correctly.

5           Q.           That is correct; correct?

6           A.           To the best of my knowledge, that is  
7 correct; yes.

8           Q.           So there is no separate market for buying  
9 and selling the NIL element of the broadcast, with  
10 respect to the players?

11           MR. GREENSPAN: Object to the form.

12 BY MR. FULLER:

13           Q.           It's a bundled market with the  
14 performance obligations in the player contract?

15           MR. GREENSPAN: Same objection.

16           THE WITNESS: The performance of the players and  
17 the NIL of the players, as it relates to playing in the  
18 games, are both included as aspects of the services that  
19 the players are providing to their teams.

20 BY MR. FULLER:

21           Q.           And there is no separate market for the  
22 NIL value in the broadcast?

23           MR. GREENSPAN: Objection.

24 BY MR. FULLER:

25           Q.           I mean, that follows from what you just

1 said. I just want to make sure that I'm not missing  
2 some quirk in what you're saying.

3 MR. GREENSPAN: I'm objecting, as to vague as to  
4 "market."

5 BY MR. FULLER:

6 Q. There is no separate place where the NIL  
7 rights in broadcast are bought and sold separate from  
8 the player contracts themselves.

9 A. (NO AUDIBLE RESPONSE)

10 Q. Your counsel seems happy with the  
11 question.

12 A. And here we're excluding from your  
13 definition of the market use in a video game, for  
14 example?

15 Q. Correct.

16 A. So it's just the use in the broadcast and  
17 for playing in the game and the other things the players  
18 do as part of being on an NFL team.

19 Q. In the game. Yeah. And the broadcast.

20 A. Well, it's more than just in the game.

21 Q. It's all their performance. The  
22 practice...

23 A. It's practice. It's travel. It's all  
24 the other things they do.

25 Q. So my characterization is correct; there

1 is not a separate transaction?

2 A. That is correct. To the best of my  
3 knowledge, that is correct.

4 MR. FULLER: Okay.

5 Q. And is the same also true with respect to  
6 the NBA contracts that you rely on? So I don't have to  
7 repeat all the same questions?

8 A. In the NBA and the NFL, it is my  
9 understanding that the rights for playing and for NIL  
10 are bundled as part of the uniform player contract.

11 Q. And the NIL rights in the broadcast are  
12 not bought or sold or transacted separately in either  
13 one of those leagues?

14 A. No. To the best of my knowledge, they  
15 are not.

16 Q. Now, let's look at your report, where you  
17 talk on Page 55 about analogous industry royalty rights.

18 Do you see that?

19 A. Yes.

20 Q. The royalty rights that you're dealing  
21 with here... And we can pull out the exhibits to your  
22 report if you want to see them.

23 But my understanding is that the royalty  
24 rates that you're looking at are royalties that have to  
25 do with products, apparel, video games; situations where

1 the NIL rights are licensed directly to a licensee as  
2 opposed to passed through the team and the league to the  
3 broadcaster.

4 Is that correct?

5 A. I'm not sure that the chain of title, for  
6 lack of a better term, is as you've stated.

7 I believe, it's at least my  
8 understanding, that the rights in -- you know -- in the  
9 NIL that are utilized in those royalty agreements flow  
10 through players associations, and come from players to  
11 teams to the PAs and then to the licensees.

12 And I can't tell you for 100 percent  
13 certain that that's exactly the way it works, but that's  
14 my general understanding.

15 Q. My understanding was that for individual  
16 endorsements at the NFL and NBA level, the player enters  
17 into his own endorsement contract. So famously, Steph  
18 Curry appeared on a Super Bowl ad and touted a now  
19 bankrupt Crypto Currency company, as I recall.

20 Those are individually negotiated between  
21 the player and the licensee, with maybe the player's  
22 agents involved. And they have nothing to do with the  
23 team, the league, or the player association.

24 Is that correct?

25 A. They may not have anything to do with



1 those entities. But it's possible that those entities  
2 also provide a license for other aspects that might go  
3 into the commercial that you mentioned.

4 As a practical matter, an individual  
5 endorsement by a player is a separate transaction from a  
6 group license.

7 Q. And the individual player receives -- the  
8 player -- the revenue from the individual endorsement  
9 usage; correct?

10 A. (NO AUDIBLE RESPONSE)

11 Q. So FTX paid Steph directly.

12 A. I can't tell you for certain that they  
13 paid him directly or indirectly.

14 I'm saying as a general rule...

15 Q. That's the way it works?

16 A. That's what I would expect to happen. It  
17 probably flowed through the agent and the agent  
18 permitted it, but I don't know for a fact.

19 Q. But that's typically the way it would  
20 work for these individual endorsement by pro players?

21 MR. GREENSPAN: Object to the form.

22 THE WITNESS: Individual endorsements are not  
23 group license.

24 BY MR. FULLER:

25 Q. They're not part of the arrangement.

1 They're not part of the group deals.

2 A. (NO AUDIBLE RESPONSE)

3 Q. They're separate.

4 A. Correct.

5 Q. The same is true in college, now that  
6 some college players can license their NIL rights to  
7 third parties; correct?

8 Do you have knowledge of that market?

9 A. You mean the same... There are different  
10 organizations. I don't know that the players all have  
11 agents like they do in the pros.

12 At least at one time, that was against  
13 NCAA rules. So I don't know specifically what is  
14 happening within the transaction.

15 Q. But you do know that individual players  
16 in college can now license their NIL rights for  
17 endorsements of various products; correct?

18 A. For third party products that don't  
19 involve the conference or school or team.

20 Q. Right.

21 A. That's my understanding.

22 Q. And the licenses that you're referring to  
23 in your report as analogous industry royalty rates,  
24 those are all licenses for third party products as well;  
25 correct?

1           A.           Generally speaking, I believe that is the  
2 case.

3           Q.           And they're separate transactions from  
4 the player contract license of NIL rights in broadcast?

5           A.           Could you repeat the question? Or  
6 rephrase the question?

7           MR. FULLER: I'll withdraw it for a moment. I  
8 want advice from my guidance counselor here to the left  
9 as to how to ask the question. You think about that and  
10 I'll ask something else.

11                       Give me exhibit... Why don't we go off  
12 the record for just a moment while I find these.

13           THE VIDEOGRAPHER: Off the record at 11:27.

14                       (WHEREUPON A RECESS WAS HELD  
15 FROM 11:27 A.M. TO 11:30 A.M.)

16           THE VIDEOGRAPHER: We are back on the record at  
17 11:30.

18           MR. FULLER: Let me... I believe the court  
19 reporter has showed you Exhibit 16.

20                       (THE DOCUMENT REFERRED TO WAS  
21 IDENTIFIED AND WAS MARKED AS  
22 EXHIBIT 16 TO THE DEPOSITION)

23           THE WITNESS: Yes, I have it.

24 BY MR. FULLER:

25           Q.           This is a report that you cite in your

1 report. 16 is a KPMG report that you cite in a footnote  
2 on Page 55 of Exhibit 12; correct?

3 A. It appears to be.

4 Q. If you will, look at Page 2 of the KPMG  
5 report that is marked as Exhibit 16.

6 A. The "Foreward"?

7 Q. You see it's "Introduction." Do you see  
8 that?

9 A. I see "Introduction" but I'm not seeing  
10 page numbers.

11 Q. It's up at the top right.

12 A. Oh, I'm sorry.

13 Yes. Okay. I've got it.

14 Q. If you look in the... There are three  
15 columns here with language in them. If you look in the  
16 middle column, the second sentence in the first full  
17 paragraph says: "We will answer two questions in patent  
18 licensing."

19 Do you see that?

20 A. Yes.

21 Q. It's my understanding from reading this  
22 report that it deals with patent licenses.

23 Is that your understanding as well?

24 A. Among other things.

25 Q. Do you see any indication that it

1 focuses, in any respect, on NIL licenses as opposed to  
2 licenses for patents and know-how technology?

3 A. Yes.

4 If you turn to Page 12, you can see that  
5 there are royalty rates stated for a variety of  
6 different kinds of products. And towards the middle of  
7 the graph on Page 12, that's called CHART 2, you can see  
8 "Media."

9 Q. Do you know what type of licenses are  
10 being addressed in this report? The Introduction says  
11 that it's patent licenses. And the media license is  
12 patent.

13 A. If you turn to Page 4, the middle column,  
14 second full paragraph talks about for software and  
15 content licensing.

16 It's been several months since I looked  
17 at this. So if you're going to ask a lot more  
18 questions, I'm going to need to just take the time to  
19 read this thing, to refresh my recollection.

20 Q. Do you know what type of content  
21 licensing KPMG was referring to in this amazingly vague  
22 report?

23 A. I know that they have a data point for  
24 media. And I was focusing on the fact that it's talking  
25 about content licensing and media.

1 Q. But you don't know anything about the  
2 background of details. I mean, this is a general report  
3 on licensing across a wide spectrum of different uses  
4 and applications; correct?

5 A. It is a, you know, research paper  
6 produced by a major accounting firm that I referred to  
7 in my report as additional support for the broad nature  
8 of licensing matters.

9 Q. And it never refers to the terms "name,  
10 image and likeness" or "publicity rights," to my  
11 knowledge.

12 A. I'm not aware that it does. And I don't  
13 believe that I purported to say that it did.

14 Q. Do you remember when Peyton Manning used  
15 to do commercials for Buick?

16 A. Not specifically.

17 Q. He does commercials now for Nationwide, I  
18 thin, with some country music singer. Have you seen  
19 those?

20 A. May have. I mean, I don't have a  
21 specific recollection.

22 Q. There's some pro players that do a lot of  
23 commercials, a lot of endorsements for different  
24 products. You agree with that; right?

25 A. Sure.

1 Q. Those pro players are often paid a flat  
2 fee and not a percentage; correct?

3 I mean, I can't imagine that Buick or  
4 Nationwide is paying Peyton Manning a percentage of  
5 their sales or their revenues or their profits.

6 MR. GREENSPAN: Object to the form.

7 MR. FULLER: I just want to know whether he  
8 knows, one way or the other, how those contracts are  
9 structured.

10 THE WITNESS: As a general matter, and I'm  
11 not... I don't, as part of my business, get involved in  
12 negotiations of those sorts of endorsement deals. But  
13 it would be my expectation that Buick is not paying him  
14 a percentage of the sale of Buicks.

15 But having said that, I wouldn't be at  
16 all surprised if certain endorsers don't get a, you  
17 know, percentage of increased sales or some other value  
18 associated with recoupment of sales of the particular  
19 product that they might endorse.

20 BY MR. FULLER:

21 Q. Is it generally true that part of your  
22 business is not representing or engaging in negotiations  
23 about endorsement contracts? Is that correct?

24 I think that's what you just said. I  
25 want to make sure I didn't misunderstand it.

1           A.           Endorsement and negotiation in  
2   endorsement contracts by athletes is not a core part of  
3   my business. In fact, the only times I can remember  
4   being involved in those sorts of endorsements would have  
5   gone back to my days at the NBA.

6           Q.           Which would have been how many years ago?

7           A.           Eighteen.

8           Q.           So it's not an area in which you have  
9   deep expertise or really any expertise?

10          A.           I don't claim to be an expert in  
11   endorsement contracts by athletes.

12          Q.           Let's look at Page 58 of your report,  
13   Exhibit 12. You're referring there to video game  
14   licensing?

15          A.           In Paragraph 16?

16          Q.           Correct.

17          A.           Yes.

18          Q.           The second sentence says:

19                        "These rights are even closer  
20   to live game NIL insofar as they are  
21   for video images and/or likenesses of  
22   players in a media-like form of a consumer  
23   product."

24                        Do you see that?

25          A.           Yes.



1 Q. And what you're saying there is that you  
2 think that the video game licenses are more analogous to  
3 the licenses of broadcasts of NIL and broadcast than the  
4 product and other types of third party licenses that are  
5 in Section 15?

6 A. Yes.

7 Q. Now, for the video games, there is a  
8 difference in that once the player licenses their rights  
9 to EA Sports or whoever is doing the video games, EA  
10 does all the work.

11 The player doesn't have to show up for  
12 practice. They don't have to perform in the video game.  
13 They don't have to show up for spring training. They  
14 don't have to do any of the numerous things that are  
15 performance obligations in any arrangement that involves  
16 playing on a team; right?

17 A. That's one of the benefits of using this  
18 as a data point in the analysis. Because they isolate  
19 the NIL conveyance as a free-standing matter and don't  
20 engage in the performance part of the business deal that  
21 would be involved with the player contract.

22 Q. But the 10 percent that you're using  
23 there is 10 percent of a video game revenue stream,  
24 which is different than a broadcast revenue royalty  
25 stream.

1                   The video game manufacturer has different  
2 costs, different markets, different overhead structure  
3 and so forth. Is that correct?

4           A.           That may be correct.

5                   This was one of the closest parallels to  
6 the broadcast license utilization that I am studying,  
7 and therefore I believe it to be a very good analogy or  
8 maybe the closest analogy that exists. But it's clearly  
9 not the same exact thing, which is why it is an analogy.

10          Q.          With respect to performances at the Super  
11 Bowl, do you have an understanding of whether the  
12 performers in the halftime shows of the Super Bowl enter  
13 into a license that includes a license of their name,  
14 image and likeness rights?

15          A.          I haven't studied that.

16          Q.          It would be something you would expect to  
17 be included; that the performer at the halftime would  
18 provide NIL rights to the NFL to promote the Super Bowl;  
19 to promote the broadcast?

20          A.          I would expect that the performer signed  
21 an agreement with the production company that then had  
22 an agreement with some NFL entity that results in the  
23 NFL being able to convey that to its broadcasters.

24          Q.          And by that you mean the NIL rights of  
25 the performer?

1 A. Yes.

2 Q. Do you have an understanding as to  
3 whether Super Bowl halftime performers are paid?

4 A. I don't have a specific understanding.

5 MR. FULLER: How about I grab another exhibit.

6 While she's looking for that exhibit,  
7 I'll ask you another series of questions and then maybe  
8 we can move this along. Well, she's got it.

9 (WHEREUPON A DISCUSSION WAS  
10 HELD OFF THE WRITTEN RECORD)

11 THE WITNESS: Before we get to this, I just want  
12 to amend the last answer.

13 I'm recalling that there is... there have  
14 been circumstances where at least some performances --  
15 ah -- performers did donate their performance for the  
16 Super Bowl. But I don't remember the details.

17 MR. FULLER: Look at Exhibit 17 and take a minute  
18 to read that.

19 (THE DOCUMENT REFERRED TO WAS  
20 IDENTIFIED AND WAS MARKED AS  
21 EXHIBIT 17 TO THE DEPOSITION)

22 MR. FULLER: Tell me when you've had a chance to  
23 look at that.

24 THE WITNESS: I have reviewed Exhibit 17.

25 ///

1 BY MR. FULLER:

2 Q. As I understand Exhibit 17, it's  
3 basically stating that halftime performers at the Super  
4 Bowl often/perhaps always perform without compensation  
5 because of the enhancement to their personal value and  
6 the publicity.

7 Is that your understanding of what it  
8 says?

9 A. I read this article. I don't... I can't  
10 vouch for anything that is in it. But that is the  
11 thrust of what it's suggesting at least with respect to  
12 certain stars. And I think it also does mention some of  
13 the fillers.

14 Q. The backup or the performers who are also  
15 on stage is what you mean by "fillers"?

16 A. No. I mean the people who jump up and  
17 down in the audience.

18 MR. FULLER: I see.

19 Q. Did you consider the situations where  
20 certain individuals choose to perform without charge  
21 because of the enhancement to their personal value from  
22 the publicity, when you prepared your report?

23 A. I didn't have any reason to.

24 Q. So the answer is: "No" you did not  
25 consider that?

1           A.           No.

2           Q.           And you said in your report at  
3   Section 7.6 that the NIL value of a student athlete is  
4   enhanced and influenced by what school the athlete goes  
5   to.

6                        Feel free to reference that, if you want.

7           A.           I'm sorry. Were you referencing 7.6?

8           MR. FULLER: Yeah.

9           Q.           My understanding of 7.6 was that you were  
10   saying that there is a synergistic effect that it  
11   enhances the value of the player's NIL to be on a  
12   broadly distributed network, sort of a virtuous circle  
13   if you will, that the exposure platform benefits the  
14   player.

15                      Perhaps I'm reading too much in to that.  
16   So why don't you just let me ask you this.

17                      Do you agree with what I just said,  
18   regardless of whether it's stated in your report, that  
19   the personal value, the NIL value of players can be  
20   enhanced by being on better teams?

21                      For example, Stetson Bennett just won the  
22   national championship. Did being on ESPN with a  
23   nationwide audience and shellacking TCU enhance Stetson  
24   Bennett's NIL value?

25           MR. GREENSPAN: Object to the form.

1 THE WITNESS: I haven't studied that. But I  
2 wouldn't doubt that winning two national titles in a row  
3 benefits his overall market value.

4 BY MR. FULLER:

5 Q. And in sports like the Olympics, would  
6 you agree with me that there can be star performers in  
7 the sport whose NIL value is greatly affected by how  
8 they perform in the Olympics, because the Olympics are  
9 widely televised and many of their other competitions in  
10 things like swimming and track are not widely televised?

11 A. I would agree with you that there is an  
12 outsized benefit from doing well in the Olympics in  
13 comparison to some minor events.

14 Q. And that's because the Olympics are so  
15 much more widely viewed and the subject of public  
16 viewing?

17 A. Not exclusively because it's widely  
18 viewed. But that's one of the benefits.

19 Q. That's part of it.

20 A. Yes.

21 Q. So would you agree with me that a high  
22 school player who comes to college has their NIL value  
23 greatly enhanced by being on television and playing in  
24 widely televised and widely viewed games?

25 MR. GREENSPAN: Object to the form.

1 BY MR. FULLER:

2 Q. Or can be enhanced in that way? Maybe  
3 not every player, but some players?

4 A. I believe that a high school player  
5 coming in to college and being... performing well and  
6 being widely viewed can often enhance that player's  
7 value.

8 MR. FULLER: Let's look at what was marked as  
9 Exhibit 3 in Dr. Rascher's deposition, which is also  
10 something you referenced. But in an effort not to have  
11 duplicative exhibits, we're going to show you the same  
12 document.

13 And, David, I'll represent to you that I  
14 wrote down a three on it when they gave it to me  
15 yesterday.

16 MR. GREENSPAN: Sure.

17 MR. FULLER: So it's the same document.

18 (WHEREUPON A DISCUSSION WAS  
19 HELD OFF THE WRITTEN RECORD)

20 MR. FULLER: I'll represent to you, Mr. Desser,  
21 that this is a financial statement that's cited in your  
22 report. And Ms. Nitto is going to give us the footnote  
23 here in just a moment.

24 Let me amend that.

REDACTED - NSC

REDACTED - NSC

13                   Why don't you give me one of these.

14                   I see that you and Dr. Rascher cited  
15 different financial statements, so I'll give you the one  
16 that you cited. They all track. Let's mark this as the  
17 next exhibit.

18                   (THE DOCUMENT REFERRED TO WAS  
19 IDENTIFIED AND WAS MARKED AS  
20 EXHIBIT 18 TO THE DEPOSITION)

21 BY MR. FULLER:

22           Q.       Have you had a chance to familiarize  
23 yourself with what you're looking at? There in your  
24 report, at Page 60, you cite SEC-HOUSE47791 at 807.

25                   Do you see that?



1 A. Yes. I'm looking at that page.

2 (DOCUMENT IS REVIEWED)

3 MR. FULLER: Tell me when you're comfortable that  
4 you have re-familiarized yourself with your report and  
5 the document that has been marked as Exhibit 18.

6 And I'll represent to you that the page  
7 that you cite in your report is Page 17 of Exhibit 18,  
8 which has the Bates number ending in 47807.

9 THE WITNESS: Yes.

10 MR. FULLER: Are you with me?

11 THE WITNESS: I'm with you.

12 BY MR. FULLER:

REDACTED - NSC

17 Is that correct? Tell me if I'm  
18 misstating something.

19 A. That is consistent with my recollection.

20 Q. So that's correct. That's what you're  
21 citing it for?

22 A. If we're going to do a math exercise, I  
23 can get out a calculator.

24 MR. FULLER: I have one.

25 Q. I just want to establish that you're

1 citing the... I don't think you need a math exercise to  
2 know what you say in your report.

REDACTED - NSC

6 A. Yes.

7 MR. FULLER: Okay.

8 Q. Do you understand that the SEC football  
9 games are on CBS, ESPN, ESPN 2, sometimes ESPNU, and the  
10 SEC Network?

11 A. That is my general understanding.

12 Q. And the CBS contract, the ESPN multimedia  
13 agreement and the network agreement are three different  
14 agreements. You understand that; right?

15 A. Yes.

16 And by "network agreement," just to  
17 clarify, you're talking about the SEC Network.

18 Q. Correct.

19 A. Not the ESPN Network.

20 Q. I'm talking about the... Yes. It's  
21 commonly called the SEC Network. I think technically  
22 it's the SEC ESPN Network but it's a separate agreement.

23 You understand that?

24 A. Yes.

REDACTED - NSC

REDACTED - NSC

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REDACTED - NSC

18 I'll loan you my calculator. Tell us the  
19 percentages in the allocation that are at the bottom of  
20 Page 17, as you calculate them, if you don't mind.  
21 I calculated them for Dr. Rascher's  
22 agreement but I didn't -- I mean exhibit -- but I did  
23 not realize that you guys were citing separate  
24 documents.

REDACTED - NSC

REDACTED - NSC

3 Are you looking at the... at Page 17?

4 A. Yes.

5 MR. FULLER: Okay.

REDACTED - NSC

11 But you should do the math yourself  
12 because I did it for a separate set of financials.

13 (DOCUMENT IS REVIEWED)

14 MR. FULLER: If your counsel will entertain this  
15 suggestion, to move things along, I will tell you what I  
16 understand these statements to show.

17 At lunch you can take the statements, do  
18 the math, and come back and tell me if you agree with  
19 me. That would be much more efficient, if that is  
20 acceptable.

21 MR. GREENSPAN: Let's hear what the homework exam  
22 is for lunch.

23 MR. FULLER: Here's what I believe these  
24 statements show. And I'll have some more questions  
25 about them, but I'll tell you what I think the math

1 shows.

REDACTED - NSC

14 Now, if it's okay with Mr. Feher, I'll  
15 let you take the calculator at lunch and confirm that.

16 I'm sorry. Greenspan. I'm sorry.

17 If it's okay with David, I will allow you  
18 to take the calculator at lunch and confirm that, and  
19 then we'll ask you some more questions.

REDACTED - NSC

23 MR. GREENSPAN: Okay.

24 MR. FULLER: Do you want to do it that way? I  
25 that okay, David?

1 MR. GREENSPAN: If you're comfortable with us  
2 going together at lunch, then fine.

3 MR. FULLER: It's just math. I don't want to sit  
4 here on the record and have you...

5 MR. GREENSPAN: Fine.

6 MS. PARSIGIAN: But you brought a calculator.

7 MR. FULLER: I brought a calculator, yes.

8 All right. Let's go to a couple other  
9 things that I think we can nail down fairly quickly, and  
10 then we'll break for lunch.

11 Mr. Desser, I'm going to show you a  
12 document that's been marked as Exhibit 21, which I will  
13 represent to you is the PGA Tour Players Handbook with  
14 Rules.

15 THE REPORTER: Previously marked 21 or we're  
16 marking 21?

17 MR. FULLER: Mark it here.

18 I'm sorry. 19.

19 (THE DOCUMENT REFERRED TO WAS  
20 IDENTIFIED AND WAS MARKED AS  
21 EXHIBIT 19 TO THE DEPOSITION)

22 BY MR. FULLER:

23 Q. My question is going to be simple. If  
24 you look at Page 125 at the bottom, it indicates that  
25 all players in the PGA Tour transfer their individual

1 rights to the PGA Tour for use in publicizing the tour  
2 and for broadcast related thereto.

3 I'll let you read it for yourself. But I  
4 interpret this to be a transfer or assignment of NIL  
5 rights to the PGA tour by the players.

6 See if you agree with that.

7 A. I'm not finding the... You said 125?

8 Q. Yeah.

9 A. Bottom of 125?

10 Q. Yeah. The one that starts out: All  
11 players in the PGA Tour co-sponsor --

12 A. Co-sponsor. Yes.

13 Q. Okay. Keep reading that. It's typical  
14 convoluted legal language but you'll figure it out.

15 A. You want me to read the rest of that  
16 section?

17 Q. No. I just want to confirm --

18 A. Just that paragraph.

19 Q. Do you agree with me that this is a  
20 provision where the players assign to the PGA tour  
21 whatever rights are needed to effectuate the broadcast  
22 of the tournaments, including their NIL rights?

23 A. You're asking me to look at a 150-page  
24 document that I'm not familiar with and tell you what  
25 one paragraph is in the context of the entire agreement?



1 MR. FULLER: Let's try this a different way.

2 Q. Are you familiar with the PGA Tour's  
3 structure with respect to transferring the NIL rights of  
4 players onto broadcasters? Is that something you  
5 studied?

6 A. I have not studied that particular  
7 transference process with respect to the PGA Tour.

8 Q. But you'd expect that there would be some  
9 type of an NIL rights transaction or assignment, based  
10 on your understanding of how media rights agreements  
11 were in general? That's consistent with your opinion?

12 A. Well, the PGA tour is an unusual  
13 enterprise insofar as it acts as both the league and the  
14 players association.

15 So I don't know how analogous it may be,  
16 but I'm not surprised to see language like this in a  
17 document that purports to be their manual.

18 Q. Under your view of NIL rights and  
19 broadcast, you would expect the broadcasters of PGA tour  
20 events to secure those rights of the players; correct?

21 A. At least for purposes of broadcasting and  
22 promoting those particular events that they are licensed  
23 to carry.

24 Q. Do you know whether the PGA players are  
25 paid for licensing their NIL rights in that regard?

1           A.           My general understanding, and I don't  
2     claim to be an expert in this, but I believe they  
3     receive prize money and they get a share of a pool which  
4     is intended to provide some compensation for their  
5     marketability. And there may as well be other forms of  
6     consideration they get. And again, of course they do  
7     also have their own sponsor. Their sponsor  
8     arrangements.

9           Q.           They keep their own personal endorsement  
10    rights?

11          A.           That's my understanding.

12          Q.           And the pool you're talking about is a  
13    pool that is divided among the top ten/top fifteen  
14    players based on the value that they bring to the tour?  
15    Is that the one you're talking about?

16          A.           I don't know how many players receive the  
17    proceeds of the pool. But it's my understanding that it  
18    involves a measurement of the amount of social media  
19    usage that they get and other metrics that the tour have  
20    promulgated.

21          Q.           So that payment doesn't go to everyone on  
22    the tour; it only goes to the... It's intended to  
23    compensate those who are bringing the most value.

24                       That's my understanding. Is that  
25    correct?

1           A.           I don't know exactly what the intention  
2 of the pool is. I do know that a pool of that sort does  
3 exist.

4           Q.           Do you understand that payments from the  
5 pool do not go to every PGA Tour cardholder who competes  
6 in a tournament?

7           A.           I don't know which players receive  
8 payments from that pool.

9           Q.           You do know that there are many players  
10 who play in tournaments who receive no prize money from  
11 the tournament because they don't finish high enough?  
12 They don't make the cut?

13          A.           That's my understanding.

14          Q.           As a matter of fact, the PGA tour is well  
15 known for being a structure where you have to win to  
16 make the tour economically viable or at least do well in  
17 tournaments; correct? Because it's prize money based.  
18 That's the primary compensation that comes out of the  
19 PGA tour.

20          MR. GREENSPAN: I'm gonna object to the form.

21          MR. FULLER: I mean, he may know this. If he  
22 doesn't know, he can tell me.

23          THE WITNESS: I know that they receive prize  
24 money. I also know that they receive sponsorship  
25 consideration. I don't know the relative ratio of those

1 things for particular players.

2 BY MR. FULLER:

3 Q. And by "sponsorship consideration" you  
4 mean personal endorsements?

5 A. Personal endorsements, wearing of, you  
6 know, someone's hat or someone's logo on their golf  
7 shirt, shoes, balls, et cetera.

8 Q. So if Tiger Woods is the person we're  
9 talking about, he gets paid by Nike because he wears  
10 Nike clothes. That's the kind of thing you're talking  
11 about in terms of personal endorsements. Not  
12 exclusively, but that's an example.

13 A. That would be an example. Though I think  
14 using Tiger Woods as an example is probably... he's a  
15 bit of an outlier.

16 Q. Well, there are other players that get  
17 paid but probably don't get paid as much but they wear  
18 certain clothes, play with certain clubs, and so forth.

19 Right?

20 A. That's my general understanding.

21 MR. FULLER: Okay.

22 Take a look at... What's the next  
23 exhibit?

24 THE REPORTER: 20.

25 ///

1 (THE DOCUMENT REFERRED TO WAS  
2 IDENTIFIED AND WAS MARKED AS  
3 EXHIBIT 20 TO THE DEPOSITION)

4 MR. FULLER: My question for you with respect to  
5 Exhibit 20...

6 I want you to read Exhibit 20 and tell me  
7 if you have any basis to say whether the information in  
8 Exhibit 20 is correct or incorrect?

9 (DOCUMENT IS REVIEWED)

10 A. All right. I've read the document.

11 Q. And the question is: Do you have any  
12 basis to tell me whether any of the information in that  
13 document is correct or incorrect from your personal  
14 knowledge or your research for this case?

15 A. I have heard of Curt Flood and the  
16 reserve clause in baseball.

17 Q. I'll tell you what. I'll narrow it. I'm  
18 really interested in the representations about how PGA  
19 Tour players are paid.

20 Do you have any basis to agree or  
21 disagree or doubt the information in there about how PGA  
22 Tour players are paid or how they are compensated?

23 A. I think this is consistent with my prior  
24 testimony, that they receive prize money and have  
25 sponsorship agreements.

1 Q. And they don't get paid a specific  
2 amount, or if they don't succeed in tournaments, any  
3 amount, for assigning their NIL rights to the PGA Tour?

4 A. I'm not aware that they have a specific  
5 payment for NIL rights.

6 Q. And because of the nature of the PGA tour  
7 structure they might not get paid at all? If they enter  
8 tournaments and never make the cut, they can go home  
9 with nothing?

10 A. I think that's correct.

11 MR. FULLER: Let's look at Exhibit 20.

12 THE WITNESS: That was Exhibit 20.

13 MR. FULLER: I'm sorry. Exhibit 21.

14 (THE DOCUMENT REFERRED TO WAS  
15 IDENTIFIED AND WAS MARKED AS  
16 EXHIBIT 21 TO THE DEPOSITION)

17 BY MR. FULLER:

18 Q. Mr. Desser, Exhibit 21 is another  
19 contract or, in this case, term sheet that you cite in  
20 your report in support of your allocation of rights  
21 between and among football, basketball and women's  
22 basketball. I believe it's cited on Page 62 of your  
23 report, and it's CUSA-GIA ending in 509 for the Bates  
24 numbers.

25 A. I have Exhibit 21.

REDACTED - NSC

16 A. Give me the page number again, please.

17 Q. Page 62, Footnote 78.

18 (DOCUMENT IS REVIEWED)

19 Q. Have you had a chance to look at that,

20 Mr. Desser?

21 A. Yes.

22 Q. And that is in fact what you cite as

23 support or as partial support for your allocations on

24 Page 62 of your report?

25 A. Yes. It's an example of one of the few

1 places that we were able to find an allocation between  
2 sports and any of the documents in the record.

3 Q. Because generally there is no allocation  
4 in these agreements anymore; right?

5 A. Except in the case of a... something like  
6 a, you know, football championship, which would be  
7 100 percent football. Most of the agreements are multi  
8 sport.

9 Q. And without allocations as to which  
10 sports the rights fees are being paid in respect of?

11 A. The networks don't particularly care how  
12 the conferences choose to allocate or not allocate.  
13 They pay a sum of money for a bucket of games and they  
14 have the rights, and it can be allocated as the parties  
15 wish.

16 Q. And so as a result, you were only able to  
17 find the Conference USA agreement marked as Exhibit 21  
18 and the references in the SEC financial statements to  
19 reflect any allocation between and among football,  
20 basketball and women's basketball, as I understand it  
21 from your report; is that correct?

22 A. I'm not sure that those were the only  
23 ones. I think that they probably were. We spent a lot  
24 of time looking, but...

25 Q. You can't identify any others for me,



1 sitting here today?

2 A. Not as I'm sitting here today.

3 Q. Okay. With respect to Exhibit 21, you  
4 would agree with me that Conference USA is not a Power 5  
5 conference; right?

6 A. Not only would I agree with that, but it  
7 is stated on Page 62 of my report.

REDACTED - NSC



REDACTED - NSC

5 MR. FULLER: I think this might be a good time to  
6 break for lunch.

7 MR. GREENSPAN: Okay.

8 THE VIDEOGRAPHER: We are off the record at  
9 12:38. This is the end of Disk 2.

10 (AT THE HOUR OF 12:39 P.M. A LUNCH RECESS  
11 WAS TAKEN. THE DEPOSITION RESUMED AT 1:36 P.M. WITH THE  
12 SAME PERSONS BEING PRESENT)

13 ///

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LOS ANGELES, CALIFORNIA; THURSDAY, JANUARY 12, 2023

1:36 P.M.

THE VIDEOGRAPHER: We are back on the record at  
1:36. This is the beginning of Disk 3.

EXAMINATION (RESUMED)

BY MR. FULLER:

Q. Mr. Desser, before lunch you took a  
calculator and some financial statements.

REDACTED - NSC



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20           Q.       With respect to the allocations that you  
21   make -- 75 percent football, 15 percent men's  
22   basketball, 5 percent women's basketball, and then  
23   there's 5 percent left for the other sports -- I want to  
24   make sure I understand exactly what you're saying there.  
25                   Are you saying that these are



1 representative allocations for a typical conference, or  
2 are you saying that these are the allocations for every  
3 one of the conferences that's a defendant here?

4 I'm trying to figure out with what level  
5 of precision you're offering these percentages.

6 A. As I believe the report says, this is an  
7 overall allocation for all of the rights for all of the  
8 conferences collectively.

9 I would anticipate that a particular  
10 conference might vary a slight amount. If in the case  
11 of say the SEC, football is a bigger deal. Or in the  
12 case of say the ACC, basketball is a bit of a bigger  
13 deal. And there is a reference to that in the report.

14 Q. So the 75-15-5 allocation is as you just  
15 described it, but it doesn't necessarily apply for any  
16 particular conference, which could deviate from that  
17 allocation because of its own situation?

18 A. The... The allocation is intended to be  
19 an overall amount. It is quite possible that the  
20 allocation might change a few percentage points one way  
21 or another for a particular conference.

22 And, you know, at such time as we're able  
23 to get additional discovery, it would be something I  
24 would look at.

25 Q. Do you have any anticipation as to how

1 many percentage points? Could the ACC be as much as 40  
2 or 50 percent of its rights fees attributable to  
3 basketball?

4 A. I wouldn't expect that it would be, on an  
5 overall basis, that much.

6 The... Football is the driver of  
7 revenue, as you well know, in college sports,  
8 particularly for the Power 5 conferences.

9 Q. But it varies from conference to  
10 conference how much revenue is received with respect to  
11 the broadcast rights for each different sport; right?

12 A. Well, the broadcast rights are generally  
13 in multi sport agreements. And the amounts of those  
14 contracts vary from conference to conference.

15 But the agreements do not typically  
16 contain an allocation, and so we have provided an  
17 estimate that we think is collective, a collective  
18 allocation, that we think is useful in this case.

19 Q. But you would agree that if we could  
20 somehow get the internal numbers at ESPN or Fox or one  
21 of the other networks, that the allocation of rights  
22 fees between and among sports would differ from  
23 conference to conference.

24 Because some sports are more popular in  
25 one conference and other sports are more popular in

1 another conference; with basketball in the ACC and  
2 football in the SEC being examples of that divergence  
3 among conferences.

4 Correct?

5 MR. GREENSPAN: Object to the form.

6 THE WITNESS: The amounts that a network might  
7 attribute could be different from the amounts that the  
8 conference might attribute.

9 As a practical matter, it isn't necessary  
10 for the most part for them to attribute them, because  
11 they have a substantially similar membership across  
12 thriving sports.

13 BY MR. FULLER:

14 Q. So the percentages could be different  
15 from different perspectives, and people could reasonably  
16 disagree about what the percentages are?

17 MR. GREENSPAN: Object to the form.

18 THE WITNESS: The differences, if there are any,  
19 are going to be small. Single digit percentages across  
20 the range of Power 5 conferences --

21 BY MR. FULLER:

22 Q. Now --

23 A. -- in my estimation.

24 Q. You use ratings as one source of  
25 reference for your allocation between and among sports?

1           A.           We looked at ratings because it's an  
2 additional marketplace value that supports allocations,  
3 you know, to the various sports. But we just provide  
4 that as an additional data point. We don't rely upon  
5 that to come to the conclusion.

6           Q.           So the ratings are not something that  
7 you're relying on here for that conclusion?

8           A.           I did not. I was not able to obtain at  
9 this stage in the process enough detail in order to use  
10 that as a primary support for my conclusions.

11                       So the data that we were able to obtain  
12 is presented but with clear limitations on the  
13 conclusions one can draw from it.

14           Q.           Is that because it's very hard to get  
15 ratings data beyond the top 100 rated programs that you  
16 pulled out from a public source?

17           A.           The principal problem is that Nielsen  
18 does not allow its data to be used in litigation.

19           MR. FULLER: I was getting to that. I've run in  
20 to that before in other cases that didn't involve media  
21 rights.

22           Q.           So the data is not available from  
23 Nielsen. And so what you had to rely on was the...

24                       We should mark this as an exhibit so  
25 we'll know what we're talking about.

1 (THE DOCUMENT REFERRED TO WAS  
2 IDENTIFIED AND WAS MARKED AS  
3 EXHIBIT 22 TO THE DEPOSITION)

4 BY MR. FULLER:

5 Q. Is Exhibit 22 the ratings data that you  
6 attached to your report that we've just been discussing?

7 I believe it to be, but tell me if we're  
8 missing something.

9 A. I'm looking at Exhibit 22 and eyeballing  
10 the first page of it. And those numbers look to be  
11 similar to and may be even the same ones that are  
12 referenced in the report.

13 The detail behind it is not something  
14 that I can be sure is from the same source. It's...

15 MR. FULLER: We received from counsel for the  
16 plaintiffs a spreadsheet called Desser Backup TV  
17 Ratings.PDF. Oh, it was an Excel sheet. Oh, I see.

18 And I'll represent to you that that's  
19 what's behind there.

20 Q. So these are the ratings that you have  
21 been referring to previously. Is that correct?

22 A. Well, previously we were talking about  
23 broader ratings. Nielsen.

24 Q. Right.

25 A. You know, Nielsen ratings that aren't

1 available for litigation.

2 So these were a snapshot of ratings that  
3 were publicly available but limited in terms of the  
4 scope. Because it is, as you mentioned, top hundred  
5 programs of the week and necessarily that will omit some  
6 of the lower rated programs.

7 Q. So you just don't have the whole universe  
8 in order to examine the totality of the ratings data  
9 because of the Nielsen limitation?

10 A. I don't have it yet. I'm holding out  
11 hope.

12 Q. You are familiar with the NCAA's contract  
13 with CBS and Turner for broadcast and distribution of  
14 the men's basketball tournament March Madness?

15 A. Yes.

16 Q. And roughly speaking, it generates about  
17 a billion dollars of revenue for the NCAA every year  
18 solely attributable to men's basketball?

19 A. No. Not solely attributable to men's  
20 basketball. Primarily attributable to men's basketball.

21 Q. What else is in that contract?

22 A. You recall earlier today we were talking  
23 about sponsorship rights.

24 Q. That's right. You've opined in the past  
25 that 80-some percent of that contract is attributable to

1 broadcast rights and the balance is attributable to the  
2 sponsorship. Is that correct? I seem to remember  
3 seeing that somewhere.

4 A. I don't believe that we ever published a  
5 percentage that was attributable to the men's basketball  
6 portion. Though I'd have to refresh my recollection, if  
7 you want me to look at some documents.

8 I can certainly recall that a substantial  
9 portion of the consideration is paid for sponsorship  
10 rights, which pertain not only to men's basketball but  
11 to the other NCAA championships, including women's  
12 basketball and softball, et cetera.

13 Q. And that would not be properly allocable  
14 to men's basketball; is that right?

15 A. "That" meaning the sponsorship portion?

16 Q. The sponsorship portion of the contract.  
17 Yes.

18 A. A portion of the sponsorship portion is  
19 fairly allocable to men's basketball but for men's  
20 basketball sponsorships.

21 Q. But not the remaining sponsorship  
22 revenues under that contract, because they were  
23 attributable to something other than men's basketball?

24 A. Correct. They're attributable, if I  
25 recall, to sponsorship of the NCAA on an overall basis.

1 (WHEREUPON A DISCUSSION WAS  
2 HELD OFF THE WRITTEN RECORD)  
3 BY MR. FULLER:

4 Q. Inherent in your allocation of 75, 15,  
5 and 5 percent of royalties to football, men's basketball  
6 and women's basketball respectively, is a relationship  
7 of three-to-one between the men's basketball value and  
8 the women's basketball royalty value; right? 15 is  
9 three times five; correct?

10 A. Yes.

11 Q. The... You wrote a report that opined as  
12 to what the rights fees for women's basketball should be  
13 if the NCAA had handled women's basketball differently  
14 than they actually handled it. Is that correct?

15 A. That was one conclusion, though to be  
16 clear, that dealt with the women's basketball  
17 championship and not women's basketball in toto as it  
18 relates to regular season.

19 Q. Yeah, I stand corrected. Because the  
20 NCAA only holds the rights to the championships. They  
21 don't hold rights to regular season games; correct?

22 A. That's my understanding.

23 Q. Because the regular season games are...  
24 the rights belong to the sponsor of the game, which is  
25 typically the school in most cases, and they are



1 assigned to the conference to be licensed as a package?

2 MR. GREENSPAN: Object to the form.

3 THE WITNESS: You probably know better than I  
4 exactly what the relationship is between the conferences  
5 and the schools. I haven't read those agreements but  
6 presumably they exist as part of the body of files of  
7 the SEC office.

8 BY MR. FULLER:

9 Q. Well, you do agree with me that the  
10 broadcast rights belong to the sponsor of the event. I  
11 think you've testified about that before.

12 A. I... "The sponsor of the event" is a  
13 little bit... isn't a phrase I would use. I mean, but  
14 to the extent that...

15 You know, I would probably use, you know,  
16 "the home team" as a better phrase. But I recognize  
17 sometimes there are home teams and away games, so it's a  
18 little bit of an imprecise usage.

19 MR. FULLER: The reason I use "the sponsor" is  
20 that for the NCAA tournament the NCAA sets it up,  
21 invites the teams, and they hold the broadcast rights.  
22 So, just so you'll understand why I use the term.

23 Q. What did you conclude in your... I've  
24 got it here if you want to reference it, but I'd hate to  
25 burden our court reporter with another fat exhibit.

1 I think you concluded that you believe  
2 that the NCAA women's basketball championship media  
3 rights should be worth between 81 million and 112  
4 million. Is that right?

5 A. That's my recollection.

6 Q. And that is not a ratio of one-to-three  
7 with the portion of the men's basketball tournament  
8 media rights. It's a much higher ratio or lower ratio.  
9 It's more like one-to-seven, one-to-eight and  
10 one-to-nine; correct?

11 MR. GREENSPAN: Object to the form.

12 THE WITNESS: The fraction is whatever it is.  
13 But that wasn't what I was measuring with 75, 15, 5.  
14 That's the overall allocation inclusive of regular  
15 season, whereas your example was only the championships.

16 BY MR. FULLER:

17 Q. But the championships are part of the  
18 math; right?

19 A. What do you mean?

20 Q. I mean, you were trying to do an overall  
21 allocation including the regular season and the  
22 championships, and I focused on only the championships;  
23 correct?

24 MR. GREENSPAN: Object to the form.

25 THE WITNESS: Your question comparing the... our

1 estimate of the NCAA women's basketball championship to  
2 men's basketball championship agreement, that ratio you  
3 were using is strictly for the championship events.

4 MR. FULLER: Correct.

5 THE WITNESS: There's no football in there, for  
6 example.

7 MR. FULLER: No. I understand that.

8 Q. But the ratio is not one-to-three if  
9 you're comparing those events. The men's basketball  
10 rights and the women's basketball rights as you believe  
11 they should be, not as they actually are.

12 It's far greater than one-to-three or  
13 less, depending on how you look at it. The denominator  
14 gets larger than three; right?

15 MR. GREENSPAN: Object to the form.

16 THE WITNESS: I recognize that the men's  
17 basketball tournament has been able to get paid, you  
18 know, more than three times as much as the women's  
19 basketball tournament.

20 BY MR. FULLER:

21 Q. When you look at the ratings data is it  
22 correct that championships and post season events like  
23 championships, the CFP, March Madness, tend to have  
24 higher ratings than the regular season, or is there any  
25 pattern that you've seen, or is the data so incomplete

1 you can't draw conclusions?

2 A. If you're asking me on a general basis  
3 are playoff ratings higher on the whole than regular  
4 season ratings on the whole, the answer is Yes, they  
5 are. But there are exceptions to every rule.

6 You know, the Georgia-Clemson football  
7 game is going to get a very high rating even if it's a  
8 regular season game. The Duke-North Carolina basketball  
9 game will get a good rating as well. And it may in fact  
10 outrate particular events in the respective  
11 championships, though not so likely in football.

12 Q. Do you have an understanding of how the  
13 media revenues attributable to the NCAA's media  
14 contracts are distributed?

15 And in particular, do you understand that  
16 the amount of the distribution that a conference gets  
17 every year is attributable to the success of teams from  
18 the conference in the tournament over a course of a  
19 number of years?

20 A. I am generally aware of the distribution.  
21 And in fact, I believe that one of the criticisms that  
22 the Kaplan report references is that the distributions  
23 are solely based on the men's results and not the  
24 women's results.

25 Q. My understanding is that for each game in

1 which a conference team appears in the men's basketball  
2 tournament, the conference earns one unit, with the  
3 exception of maybe the final game, so that a... And  
4 that the units determine how the NCAA's revenues are  
5 distributed in part, and that therefore a conference  
6 that has more units, all other things being equal, will  
7 get more revenues.

8 Is that correct, as you understand it?

9 MR. GREENSPAN: Object to the form.

10 THE WITNESS: Um, that sounds consistent with my  
11 understanding, but I cannot tell you for certain that  
12 that is all there is to it.

13 BY MR. FULLER:

14 Q. Do you understand that the NCAA also  
15 makes certain distributions that are earmarked for  
16 certain types of uses on student assistance funds,  
17 distributions that are based on certain academic  
18 progress criteria? Do you have any understanding of  
19 that?

20 A. I've heard things like that. That  
21 doesn't come as a surprise to me. But I can't tell you  
22 in any detail the application of those allocation  
23 criteria.

24 Q. You haven't accounted for any of these  
25 allocation variances or variables over the course of

1 time in your report and calculating the 75 percent,  
2 15 percent, 5 percent; is that right?

3 A. We're... We strictly looked at the  
4 period that is covered by the case, which I believe goes  
5 back to the middle of 2016.

6 Q. And during that period, if the  
7 distributions to each conference varied because of  
8 varying success in the basketball tournament or  
9 variances in other factors that may drive the  
10 distribution, you haven't taken that into account in  
11 your calculations; is that correct?

12 MR. GREENSPAN: Object to the form.

13 MR. FULLER: Yeah, I don't think he has.

14 THE WITNESS: As I said before, the percentages  
15 are an overall percentage, and so it would tend to wash  
16 out over a number of years. But I've not studied that  
17 particular aspect.

18 BY MR. FULLER:

19 Q. And you understand that the CFP  
20 distributions...

21 By "CFP" we mean college football  
22 playoffs. You understand that?

23 A. Yes.

24 Q. ... are also dependent in part upon  
25 success in getting teams in to the college football

1     playoff; is that correct?

2             A.           I will tell you that I have tried  
3     mightily to really understand the whole CFP  
4     distribution. And I have not been able to directly  
5     connect it to any particular data that I'm aware of.

6             So I can only conclude that it is a  
7     negotiated amount between all of the parties involved in  
8     college football. But that is merely my assumption and  
9     not a statement of fact.

10            Q.           In any event, however it's done, if there  
11    is a variance from year to year your answer would be the  
12    same as with respect to the NCAA distributions?

13            You've looked at a collective value and  
14    you haven't tried to allocate for differences from year  
15    to year?

16            A.           For purposes of our analysis at this  
17    point for class certification purposes, we've come up  
18    with what we believe to be a reliable approach for  
19    allocating as between sports on an overall basis.

20            I can imagine going further in the future  
21    to fine tune that, but I don't imagine it will make a  
22    huge material difference.

23            MR. FULLER: I suppose that I should move to  
24    strike, but I don't believe we'll get the court reporter  
25    to rule on that one in this case.

1 Q. So my question was: Have you included  
2 that in your analysis? And I take it your answer is:  
3 "No," you have not?

4 A. And the "that" in this case is the way  
5 the CFP money is divvied up?

6 Q. And it differs from year to year. Yes.

7 A. No, we haven't taken into account that  
8 variation from year to year. That was not part of our  
9 assignment.

10 Q. You have an example in your report that  
11 has to do with a car. Do you remember that?

12 A. Yes.

13 Q. And with a car, you buy the car, but the  
14 price of the car varies depending on what attributes the  
15 car has. Whether it has air conditioning. Whether it  
16 has power steering. Whether it has heads-up speed in  
17 the windshield.

18 Those are all different options that you  
19 can pay more or less for; correct?

20 A. There are options that one can pay for or  
21 not pay for in a car. But typically there wouldn't be  
22 an option to get the car without its wheels or without  
23 its body.

24 Q. But if you're like me and you ran into a  
25 curve in Charlotte in the dark and destroyed your wheel,



1 you can buy another wheel for the car; right?

2 A. I've not tried to buy a wheel in  
3 Charlotte for a car, but I presume that it would be  
4 doable.

5 Q. Because individual car parts are sold  
6 separately. As a matter of fact, Napa has made a  
7 national business out of selling car parts, as have  
8 various manufacturing companies of different types;  
9 right?

10 A. I'm not an expert in the car parts  
11 market.

12 Q. I'm just asking you because you included  
13 the example in your report, so I thought I should delve  
14 in to it.

15 A. There are a large number of elements of  
16 cars that are not options. And, yes, you can buy a  
17 bunch of smaller parts as replacement parts. I suspect  
18 they'll end up costing quite a bit more than the car  
19 does as a single unit.

20 Q. But there is a separate market for the  
21 individual parts if you need to buy them; correct?

22 MR. GREENSPAN: Object to the form.

23 BY MR. FULLER:

24 Q. If you want to buy them? Somebody buys  
25 them? There is a separate market you can go on the

1 internet and find out what it costs to buy a wheel or  
2 even an engine; right?

3 A. You can buy lots of things on the  
4 internet.

5 Q. Including separate car parts.

6 A. The analogy in the report was not  
7 intended to exclude the possibility of there being  
8 replacement parts.

9 It was rather to make the point that when  
10 you buy the car, you get a sum total of the parts  
11 delivered, putting aside the issue of options.

12 MR. FULLER: Why don't we take a short break  
13 here. We're close to being done.

14 THE VIDEOGRAPHER: We are off the record at 2:16.

15 (WHEREUPON A RECESS WAS HELD

16 FROM 2:16 P.M. TO 2:23 P.M.)

17 THE VIDEOGRAPHER: Back on the record at 2:23.

18 MR. FULLER: Mr. Desser, I have no further  
19 questions at this time.

20 MR. GREENSPAN: I don't have any examination.

21 MR. FULLER: So we're done.

22 THE VIDEOGRAPHER: We are off the record at 2:24.  
23 This concludes today's deposition.

24 (AT THE HOUR OF 2:24 P.M.

25 THE DEPOSITION WAS ADJOURNED)

\* \* \*

I, declare under penalty of perjury that the foregoing  
is an accurate transcription of my testimony under the  
laws of the State of California, executed on the \_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Edwin Desser

Reporter's Certificate  
of  
Certified Shorthand Reporter

\* \* \* \* \*

I, the undersigned Certified Shorthand Reporter, in  
and for the State of California, do hereby certify:  
That the foregoing proceedings were taken before me  
at the time and place therein set forth, at which time  
the witness was put under oath by me; that the testimony  
of the witness and all objections at the time of the  
proceedings were recorded stenographically by me and  
were thereafter transcribed under my direction; that  
the foregoing is a true record of the testimony and  
of all objections made at the time of the proceedings.

In witness whereof, I have subscribed my name on:

DATE: January 13th, 2023



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KIMBERLY WILDISH, CSR NO. 8078

## 1 ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg. No. Now Reads Should Read Reason

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Signature of Deponent

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22 SUBSCRIBED AND SWORN BEFORE ME

23 THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

24 \_\_\_\_\_

25 (Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_